



Statute Law of the Transvaal

1839—1910

(IN FORCE ON 31ST MAY, 1910)

Vol. II
1900—1906

(CROWN COLONY)

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NOTE

The Mining Certificate Ordinance, 1903 (No. 50, 1903); the Mines, Works, and Machinery Regulations Ordinance, 1903 (No. 54, 1903); the Mines, Works, and Machinery Regulations Amendment Ordinance, 1905 (No. 31, 1905); and the Mining Certificates Amendment Ordinance, 1906 (No. 11, 1906), have been omitted from this volume, as they have been repealed by Act No. 32, 1909, section 1. This Act, although amended by Act No. 8, 1910, has, with the latter, not as yet been put in force; it is anticipated, however, that such will be done at an early date; and in the event of these Acts not having been put into operation by the time the third volume is issued, the above four Ordinances will be added to it as an Appendix.

STATUTE LAW OF THE TRANSVAAL, 1839-1910.

ERRATUM.

Vol. II, Sec. 7 (a), p. 1455, to read as follows :—

(a) That no alteration or deviation in any watercourse spruit storm-ditch or public drain by means of which any water is led into any reservoir dam or pond owned by or used by the Freeholders or any of them shall be effected or carried out by the Council save with the consent in writing of the Freeholders or such one or more of them as may be affected thereby.

ERRATUM

Page 439, Proclamation 6, 1900. Read heading: "Native Marriages by Christian *Rites*."

PREFACE

THIS volume contains the Proclamations and Ordinances issued and passed from 1900 to 1906, inclusive, in so far as the same are still in force.

When special sections were repealed, and other provisions substituted for the cancelled clauses, the new provisions have been inserted in the text, whenever the form in which they were passed made such possible; when that was not the case, the new clauses are referred to.

It was found impossible to refer to the bye-laws and regulations framed under the different municipal enactments by way of footnotes since Ordinance No. 58, 1903, section 45, as amended by Ordinance No. 41, 1904, section 27, dispenses with the necessity of publishing these regulations in the *Gazette*.

Ordinances Nos. 8 and 12 of 1903, though not repealed, are practically obsolete: they are, however, published, as they might conceivably become of force again at a future period.

Volumes III and IV of these Statutes (Acts 1907—1910, and the Chronological Table) are in print, and it is hoped that that they will be published at an early date.

It may be added that the Sand River and other Conventions and Treaties, published in the first and this volume, have been taken from the English text where such existed.

CARL JEPPE.

J. H. GEY VAN PITTIUS.

ALPHABETICAL LIST OF CONTENTS.

Subject.	No. of Law, etc.	Page.
A		
Accountants	Ord. III (Priv.), 1904	1444
Administration of Estates	Tr. Pr. 28, 1902 ..	701
Administration of Estates Proclamation Amendment	Ord. 15, 1905 ..	1502
Administration of Justice	Tr. Pr. 14, 1902 ..	593
Administration of Justice Amendment ..	Ord. 31, 1904 ..	1350
Alienations by Government of South African Republic	Tr. Pr. 26, 1901 ..	461
Aliens. See Naturalization of.		
Annexation of South African Republic ..	Pr. 15, 1900 ..	441
Appellate Jurisdiction, Supreme Court Extension (Repealing)	Ord. 22, 1904 ..	1289
Appropriation	Ord. 13, 1903 ..	997
Appropriation	Ord. 48, 1903 ..	1121
Appropriation	Ord. 61, 1903 ..	1172
Appropriation	Ord. 32, 1904 ..	1352
Appropriation	Ord. 33, 1904 ..	1353
Appropriation	Ord. 34, 1904 ..	1355
Appropriation	Ord. 35, 1904 ..	1357
Appropriation	Ord. 8, 1905 ..	1489
Appropriation	Ord. 9, 1905 ..	1490
Appropriation	Ord. 10, 1905 ..	1492
Appropriation	Ord. 11, 1905 ..	1494
Appropriation	Ord. 12, 1905 ..	1496
Appropriation	Ord. 14, 1906 ..	1629
Appropriation	Ord. 15, 1906 ..	1630
Appropriation	Ord. 16, 1906 ..	1631
Appropriation	Ord. 17, 1906 ..	1634
Appropriation	Ord. 18, 1906 ..	1635
Appropriation	Ord. 27, 1906 ..	1667
Arbitration	Ord. 24, 1904 ..	1298
Arbitration Clauses	Tr. Pr. 5, 1902 ..	503
Attorney's Admission (Amendment)	Ord. 1, 1904 ..	1231
B		
Bail, Magistrates' Courts	Ord. 15, 1903 ..	1002
Bank, National, of South Africa, Ltd... ..	Ord. 16, 1902 ..	800
Bank, National, Concession	Ord. 33, 1903 ..	1039
Bills of Costs (Amending Law 12, 1899) ..	Ord. 9, 1902 ..	787

Alphabetical List of Contents.

Subject.	No. of Law, etc.	Page.
Bills of Exchange	Tr. Pr. 11, 1902 ..	549
Births, Marriages and Deaths Registration ..	Ord. 19, 1906 ..	1637
Brands. See Great Stock Brands.		
Burgher Indemnity	Ord. 22, 1903 ..	1021
Burial Grounds, Imperial, Colonial, and Re- publican Forces	Tr. Pr. 20, 1902 ..	626
C		
Cattle Disease (East Coast Fever)	Ord. 38, 1904 ..	1369
Census	Ord. 9, 1904 ..	1245
Chinese. See Labour Importation.		
Church, Transfer of Ground to Dutch Reformed	Ord. 7, 1902 ..	785
Circuit Courts Procedure	Ord. 1, 1905 ..	1459
Civil Service, Appointments during incapacity, etc.	Ord. 37, 1902 ..	861
Claims and Stands, Arrear Licence Moneys on ..	Ord. 11, 1902 ..	796
Claims and Stands, Licence Moneys on ..	Ord. 18, 1902 ..	803
Coloured Persons Health Regulations	Ord. 32, 1905 ..	1546
Commission, Malmani Gold Fields	Ord. 52, 1903 ..	1123
Commission (War Stores)	Ord. 22, 1905 ..	1523
Commissions' Powers	Ord. 30, 1902 ..	825
Compound Overseers	Tr. Pr. 38, 1901 ..	496
Concentration Camps and Military Structures ..	Ord. 39, 1902 ..	868
Contempt of Court—Magistrates' Courts	Ord. 36, 1903 ..	1046
Contracts—Extension of Time	Tr. Pr. 12, 1901 ..	453
Contracts—Extension of Time	Tr. Pr. 37, 1902 ..	776
Copyright, Military Maps	Tr. Pr. 24, 1902 ..	697
Costs. See Bills of Costs.		
Court, Establishment of the Supreme and High Court, Magistrates'. See Magistrates.	Ord. 2, 1902 ..	782
Court, Supreme Court, Appellate, Jurisdiction Extension (Repealing)	Ord. 22, 1904 ..	1289
Courts, Superior, Criminal Jurisdiction	Ord. 10, 1903 ..	991
Crimes	Ord. 26, 1904 ..	1312
Crimes, Prevention of	Ord. 20, 1905 ..	1518
Criminal Jurisdiction, Superior Courts	Ord. 10, 1903 ..	991
Criminal Procedure Code	Ord. 1, 1903 ..	900
Criminal Procedure Amendment	Ord. 47, 1904 ..	1402
Crown Land Disposal	Ord. 57, 1903 ..	1129
Crown Land Disposal Amendment	Ord. 13, 1906 ..	1628
Crown Liabilities	Ord. 51, 1903 ..	1122
Crown Property	Ord. 19, 1902 ..	804
Customs Amendment	Ord. 4, 1906 ..	1590
Customs Duty, Colonial Produce Suspension ..	Ord. 12, 1903 ..	996
Customs Duty (Sugar) Suspension	Ord. 8, 1903 ..	989
Customs Management	Ord. 23, 1902 ..	805
Customs Management Ordinance, 1902, Amend- ment	Ord. 5, 1904 ..	1235

Alphabetical List of Contents.

Subject.	No. of Law, etc.	Page.
D		
Days of Grace	Tr. Pr. 13, 1902 ..	592
Deaths Registration	Ord. 19, 1906 ..	1637
Dentists	Ord. 29, 1904 ..	1332
Dentists Amendment	Ord. 18, 1905 ..	1516
Deserted Wives and Children Protection ..	Ord. 44, 1903 ..	1098
Detention of Prisoners	Ord. 36, 1904 ..	1359
Diamond Trade	Ord. 63, 1903 ..	1178
Disease, Cattle (East Coast Fever) ..	Ord. 38, 1904 ..	1369
Disease, Epidemic. See Epidemic Disease.		
Diseases, Notification of Infectious	Pr. 21, 1900 ..	442
Diseases of Plants Prevention	Ord. 16, 1904 ..	1268
Diseases of Stock	Ord. 17, 1902 ..	801
E		
East Coast Fever	Ord. 38, 1904 ..	1369
Elections, Municipalities	Ord. 38, 1903 ..	1048
Elections, Municipalities E. Amendment ..	Ord. 49, 1904 ..	1435
Elections, Municipalities E. Amendment ..	Ord. 26, 1905 ..	1534
Elections, Municipalities E. Amendment ..	Ord. 24, 1906 ..	1651
Epidemic Disease and Hospital Committees ..	Ord. 3, 1905 ..	1465
Epidemic Disease and Hospital Committees Amending	Ord. 7, 1906 ..	1623
Estates. See Administration of.		
Evidence, Neighbouring Colonies	Ord. 2, 1906 ..	1586
Evidence Proclamation	Tr. Pr. 16, 1902 ..	612
Evidence Proclamation Amendment	Ord. 21, 1904 ..	1288
Examining Board (Survey Examinations) ..	Ord. 8, 1904 ..	1244
Explosives	Ord. 4, 1905 ..	1468
Explosives Importation	Ord. 59, 1903 ..	1162
Expropriation, Municipalities Powers of ..	Ord. 64, 1903 ..	1199
Expropriation of Lands and Arbitration Clauses	Tr. Pr. 5, 1902 ..	503
Expropriation of Lands, Railway	Ord. 20, 1903 ..	1014
F		
Fish Preservation	Ord. 5, 1906 ..	1604
Foreign Enlistment Act (Application to Colony)	Ord. 1, 1906 ..	1578
Fugitive Offenders Act	Tr. Pr. 25, 1901 ..	458
G		
Game Preservation	Ord. 6, 1905 ..	1480
<i>Gazette, Government</i>	Pr. 8, 1901 ..	447
General Revenue. See Revenue.		
Georgetown. See Germiston.		
Germiston and Georgetown	Ord. V (Priv.), 1904	1452
Gold Tax. See Tax.		
Great Stock Brands	Ord. 15, 1904 ..	1256

Alphabetical List of Contents.

Subject.	No. of Law, etc.	Page.
H		
Hatherley Distillery (Cancellation of Concession)	Ord. 53, 1903 ..	1125
Health Regulations, Coloured Persons ..	Ord. 32, 1905 ..	1546
High Court. See Court.		
Holidays, Public	Ord. 37, 1903 ..	1047
Hospital Committees	Ord. 3, 1905 ..	1465
Hospital Committees Amending	Ord. 7, 1906 ..	1623
I		
Immorality	Ord. 46, 1903 ..	1105
Incorporated Law Society, Constitution of the	Ord. I (Priv.), 1905	1554
Indemnity and Peace Preservation	Ord. 38, 1902 ..	862
Indemnity (Burgher)	Ord. 22, 1903 ..	1021
Infectious Diseases. See Diseases.		
Inquests	Tr. Pr. 10, 1901 ..	449
Insolvency Law Amendment	Ord. 5, 1905 ..	1478
Institute of Land Surveyors. See Surveyors.		
J		
Johannesburg Insanitary Area Commission ..	Ord. 30, 1902 ..	825
Johannesburg Insanitary Area Expropriation	Ord. 19, 1903 ..	1006
Johannesburg Lands	Ord. 24, 1905 ..	1530
Johannesburg Municipal	Ord. II (Priv.), 1905	1564
Johannesburg Municipal	Ord. II (Priv.), 1906	1680
Johannesburg Municipality Amendment ..	Tr. Pr. 39, 1902 ..	777
Johannesburg Municipality Borrowing Powers	Ord. 3, 1903 ..	970
Johannesburg Municipality Borrowing Powers Amendment	Ord. 23, 1903 ..	1026
Johannesburg Municipality Borrowing Powers Further Amendment	Ord. I (Priv.), 1904	1438
Johannesburg Municipality Borrowing Powers Amendment	Ord. IV (Priv.), 1904	1451
Johannesburg Municipality—Duties of Chairman	Ord. 34, 1902 ..	859
Johannesburg Municipality Further Powers ..	Ord. 62, 1903 ..	1174
Johannesburg Municipality—Plan of Townships	Ord. 21, 1903 ..	1019
Johannesburg Municipality Special Borrowing Powers	Ord. 9, 1903 ..	990
Johannesburg Stadsraad Liabilities Liquidation	Ord. 27, 1902 ..	822
Johannesburg Town Council—Arrear Rates ..	Tr. Pr. 16, 1901 ..	455
Judges' Pensions	Ord. 35, 1903 ..	1044
Jurors (Witwatersrand District)	Ord. 69, 1903 ..	1230
Jury Ordinance	Ord. 10, 1902 ..	788
Jury Ordinance, 1902, Amendment	Ord. 28, 1903 ..	1027
Jury Ord., 1902, Further Amendment ..	Ord. 39, 1903 ..	1082
Justice. See Administration of Justice.		
Justices of the Peace	Ord. 19, 1904 ..	1284
Juvenile Offenders, Removal and Apprenticeship	Ord. 45, 1903 ..	1102

Alphabetical List of Contents.

Subject.	No. of Law, etc.	Page.
L		
Labour Agents and Compound Overseers ..	Tr. Pr. 38, 1901 ..	496
Labour Importation	Ord. 17, 1904 ..	1269
Labour Importation Amendment	Ord. 27, 1905 ..	1540
Labour Importation Amendment	Ord. 12, 1906 ..	1627
Land, Crown. See Crown Land.		
Lands, Johannesburg	Ord. 24, 1905 ..	1530
Land Surveyors. See Surveyors.		
Land Titles	Ord. 18, 1904 ..	1282
Lands, Town	Ord. 14, 1904 ..	1254
Lands, Town L. Amendment	Ord. 2, 1905 ..	1460
Law Society. See Incorporated Law Society.		
Laws, Correction of Errors in	Ord. 4, 1904 ..	1234
Laws, Interpretation of	Tr. Pr. 15, 1902 ..	608
Laws, Revision of	Tr. Pr. 34, 1901 ..	464
Laws, Revision of	Ord. 40, 1903 ..	1083
Leases, Exemption from Rent	Tr. Pr. 27, 1901 ..	462
Legalization of Marriages. See Marriages.		
Leprosy	Ord. 23, 1904 ..	1290
Licensing Law Amendment	Ord. 50, 1902 ..	899
Licence Moneys Arrear on Claims and Stands ..	Ord. 11, 1902 ..	796
Licence Moneys on Claims and Stands ..	Ord. 18, 1902 ..	803
Licences, Revenue	Ord. 23, 1905 ..	1525
Lieutenant-Governor's Official Duties ..	Ord. 24, 1902 ..	819
Liquor Licensing	Ord. 32, 1902 ..	828
Liquor Licensing Amendment	Ord. 2, 1903 ..	969
Liquor Licensing Further Amendment.. ..	Ord. 17, 1903 ..	1004
Liquor Licensing Amendment	Ord. 8, 1906 ..	1624
Liquor Licensing (Railway Employees and Amending)	Ord. 68, 1903 ..	1229
Loan, Transvaal Guaranteed	Ord. 31, 1903 ..	1029
Local Authorities and Plague Committee Validation	Ord. 28, 1904 ..	1321
Local Authorities Rating. See Rating.		
Local Authorities Roads.. .. .	Ord. 44, 1904 ..	1389
Lunacy	Tr. Pr. 36, 1902 ..	759
M		
Magistrates' Court	Tr. Pr. 21, 1902 ..	628
Magistrates' Court Proclamation Amendment	Ord. 47, 1902 ..	894
Magistrates' Court Proclamation Amendment..	Ord. 12, 1904 ..	1251
Magistrates' Courts (Bail)	Ord. 15, 1903 ..	1002
Magistrates' Courts—Contempt of Court ..	Ord. 36, 1903 ..	1046
Malmari Gold Fields Commission	Ord. 52, 1903 ..	1123
Manoeuvres, Military	Ord. 25, 1903 ..	1023
Maps, Copyright, Military	Tr. Pr. 24, 1902 ..	697
Marriage Law Amendment	Tr. Pr. 2, 1901 ..	448

Alphabetical List of Contents.

Subject.	No. of Law, etc.	Page.
Marriage Law Amendment	Ord. 39, 1904 ..	1375
Marriages Amendment, Native	Tr. Pr. 25, 1902 ..	698
Marriages by Christian Rites, Native ..	Pr. 6, 1900 ..	439
Marriages, Legalization of	Tr. Pr. 31, 1902 ..	743
Marriages, Legalization of	Ord. 26, 1902 ..	820
Marriages, Legalization of	Ord. 33, 1905 ..	1548
Marriages, Legalization of Marriage of Coloured Persons	Ord. 29, 1903 ..	1028
Marriages Registration	Ord. 19, 1906 ..	1637
Medical, Dental and Pharmacy	Ord. 29, 1904 ..	1332
Medical, Dental and Pharmacy Amendment ..	Ord. 18, 1905 ..	1516
Merchandise Marks	Ord. 47, 1903 ..	1112
Military Manoeuvres	Ord. 25, 1903 ..	1023
Military Structures	Ord. 39, 1902 ..	868
Military Water Supply, Pretoria	Ord. 34, 1905 ..	1551
Mortgage Bonds	Ord. 42, 1902 ..	870
Mortgage Bonds, Interest on	Tr. Pr. 32, 1902 ..	745
Mortgages, Exemption from Interest	Tr. Pr. 27, 1901 ..	462
Municipal Amending	Ord. 17, 1905 ..	1510
Municipal Amending	Ord. 26, 1906 ..	1656
Municipal Corporations	Ord. 58, 1903 ..	1135
Municipal Corporations Amendment	Ord. 41, 1904 ..	1379
Municipal Elections	Ord. 38, 1903 ..	1048
Municipalities Elections Amendment	Ord. 49, 1904 ..	1435
Municipalities Elections Amendment	Ord. 26, 1905 ..	1534
Municipalities Elections Amendment	Ord. 24, 1906 ..	1651
Municipalities Powers of Expropriation ..	Ord. 64, 1903 ..	1199
N		
National Bank. See Bank.		
Native Commissioners' Jurisdiction	Ord. 3, 1902 ..	784
Native Commissioner, Powers of	Tr. Pr. 32, 1901 ..	463
Native Passes. See Passes.		
Natives. See Health Regulations.		
Natives' Relief	Ord. 28, 1902 ..	823
Natives, Vaccination of, See Vaccination.		
Naturalization of Aliens	Ord. 46, 1902 ..	891
Naturalization of Aliens (Amendment).. ..	Ord. 10, 1904 ..	1249
Neighbouring Colonies Evidence	Ord. 2, 1906 ..	1586
Newspaper Registration	Ord. 49, 1902 ..	896
Notification of Diseases. See Diseases.		
O		
Occupation Farms	Ord. 25, 1904 ..	1305
Occupation Farms Amendment.. .. .	Ord. 13, 1905 ..	1498
Officials Duties	Ord. 1, 1902 ..	781
Opium Trade Regulation	Ord. 25, 1906 ..	1652

Alphabetical List of Contents.

Subject.	No. of Law, etc.	Page.
P		
Passes, Native	Tr. Pr. 37, 1901 ..	486
Passes, Native Night	Ord. 43, 1902 ..	871
Passes, Native P. Proclamation Amendment..	Ord. 27, 1903 ..	1026
Patents	Tr. Pr. 22, 1902 ..	669
Patents Amendment	Tr. Pr. 29, 1902 ..	742
Peace Preservation	Ord. 38, 1902 ..	862
Peace Preservation	Ord. 5, 1903 ..	986
Peace Treaty, Vereeniging	—	445
Pensions	Ord. 30, 1906 ..	1669
Pensions, Judges'	Ord. 35, 1903 ..	1044
Pharmacy	Ord. 29, 1904 ..	1332
Pharmacy Amendment	Ord. 18, 1905 ..	1516
Plague Committee Validation	Ord. 28, 1904 ..	1321
Plants. See Diseases of Plants.		
Postage, Imperial Penny	Pr. 26, 1900 ..	444
Post Office Savings Bank	Tr. Pr. 33, 1902 ..	746
Precious Stones	Ord. 66, 1903 ..	1209
Premier (Transvaal) Diamond Mining Company	Ord. 25, 1905 ..	1532
Pretoria and Military Water Supply	Ord. 34, 1905 ..	1551
Pretoria Cab Regulations (Amending Law 16, 1895)	Ord. 8, 1902 ..	786
Pretoria Municipal	Tr. Pr. 7, 1902 ..	515
Pretoria Municipal Proclamation Amendment..	Ord. 31, 1902 ..	827
Pretoria Municipal	Ord. I (Priv.), 1906	1676
Pretoria Municipality Extended Powers ..	Ord. 50, 1904 ..	1437
Pretoria Prison (Appointment of Governor) ..	Ord. 36, 1902 ..	860
Prevention of Crimes	Ord. 20, 1905 ..	1518
Prisoners' Detention	Ord. 36, 1904 ..	1359
Prisons and Reformatories	Ord. 6, 1906 ..	1606
Procedure, Circuit Courts	Ord. 1, 1905 ..	1459
Procedure, Criminal Code	Ord. 1, 1903 ..	900
Procedure, Criminal P. Amendment	Ord. 47, 1904 ..	1402
Profits Tax (Gold Mines)	Tr. Pr. 34, 1902 ..	754
R		
Rabies	Ord. 27, 1904 ..	1319
Railway Construction Prohibition Law Amend- ment	Ord. 43, 1904 ..	1388
Railway Dwellings Rating	Ord. 29, 1905 ..	1544
Railway Expropriation of Lands	Ord. 20, 1903 ..	1014
Railway, Selati Railway Debentures Redemption	Ord. 21, 1905 ..	1522
Rand Water Board Incorporation	Ord. 32, 1903 ..	1032
Rand Water Board Extended Powers	Ord. 48, 1904 ..	1403
Rand Water Board Extended Powers Amend- ment	Ord. 30, 1905 ..	1545
Rand Water Board Extended Powers Amend- ment	Ord. 21, 1906 ..	1649

Alphabetical List of Contents.

Subject.	No. of Law, etc.	Page.
Rating, Local Authorities	Ord. 43, 1903 ..	1087
Rating, Local Authorities Rating Amendment ..	Ord. 45, 1904 ..	1400
Rating, Local Authorities Rating Amendment	Ord. 22, 1906 ..	1650
Rating, Railway Dwellings	Ord. 29, 1905 ..	1544
Reformatories	Ord. 6, 1906 ..	1606
Resident Justices of the Peace	Ord. 19, 1904 ..	1284
Revenue, General Revenue Amendment ..	Ord. 28, 1906 ..	1668
Revenue Licences	Ord. 23, 1905 ..	1525
Roads, Local Authorities	Ord. 44, 1904 ..	1389
S		
School Committees	Tr. Pr. 9, 1902 ..	547
Selati Railway Debentures Redemption ..	Ord. 21, 1905 ..	1522
Settlers	Ord. 45, 1902 ..	872
Sheriff	Tr. Pr. 17, 1902 ..	623
South African Republic, Annexation of	Tr. Pr. 26, 1901 ..	461
Stamp Duties Amendment	Tr. Pr. 12, 1902 ..	577
Stamp Duty Amendment	Tr. Pr. 26, 1902 ..	699
Stamp Duty Further Amendment	Ord. 14, 1902 ..	799
Stamp Duties Amendment	Ord. 40, 1904 ..	1376
Stamp Duties Amendment	Ord. 16, 1905 ..	1506
Stands, Arrear Licence Moneys on Claims and ..	Ord. 11, 1902 ..	796
Stands, Licence Moneys on Claims and ..	Ord. 18, 1902 ..	803
Stock, Diseases of. See Diseases.		
Stock Theft	Ord. 6, 1904 ..	1236
Superior Courts. See Courts.		
Supreme Court. See Court.		
Survey Examinations (Examining Board) ..	Ord. 8, 1904 ..	1244
Surveyors, Institute of Land Surveyors Incorporation	Ord. II (Priv.), 1904	1439
Surveyors, Land Surveyors' Admission ..	Ord. 55, 1903 ..	1128
Survey, Trigonometrical	Ord. 11, 1903 ..	994
T		
Tax, Profits (Gold Mines)	Tr. Pr. 34, 1902 ..	754
Telegraph Messages Protection	Ord. 48, 1902 ..	895
Theft, Stock	Ord. 6, 1904 ..	1236
Titles, Land	Ord. 18, 1904 ..	1282
Town Lands	Ord. 14, 1904 ..	1254
Town Lands Amendment	Ord. 2, 1905 ..	1460
Trade, Diamond	Ord. 63, 1903 ..	1178
Trade Marks Registration	Tr. Pr. 23, 1902 ..	690
Trade Marks Registration Amendment ..	Ord. 3, 1904 ..	1233
Transfer Duty	Tr. Pr. 8, 1902 ..	528
Transfer Duty Amendment	Tr. Pr. 27, 1902 ..	700
Transfer Duty Amending	Ord. 14, 1905 ..	1499

Alphabetical List of Contents.

Subject.	No. of Law, etc.	Page.
Transfer of certain Ground to Dutch Reformed Church	Ord. 7, 1902 ..	785
Transvaal Guaranteed Loan	Ord. 31, 1903 ..	1029
Trigonometrical Survey	Ord. 11, 1903 ..	994
V		
Vaccination of Natives	Tr. Pr. 23, 1901 ..	456
Vereeniging Peace Treaty	—	445
Volunteer Corps	Ord. 37, 1904 ..	1360
W		
War Stores (Commission)	Ord. 22, 1905 ..	1523
Water Supply, Pretoria and Military	Ord. 34, 1905 ..	1551
Wills	Ord. 14, 1903 ..	1000

CHRONOLOGICAL LIST OF CONTENTS.

No. of Law, etc.	Subject.	Page.
1900.		
Pr. 6, 1900	Native Marriages by Christian Rites.. ..	439
Pr. 15, 1900	Annexation of the South African Republic..	441
Pr. 21, 1900	Notification of Infectious Diseases	442
Pr. 26, 1900	Imperial Penny Postage	444
1901.		
—	Vereeniging Peace Treaty	445
Pr. 8, 1901	<i>Government Gazette</i>	447
Tr. Pr. 2, 1901	Marriage Law Amendment	448
Tr. Pr. 10, 1901	Inquests	449
Tr. Pr. 12, 1901	Contracts—Extension of time	453
Tr. Pr. 16, 1901	Arrear Rates—Johannesburg Town Council..	455
Tr. Pr. 23, 1901	Vaccination of Natives	456
Tr. Pr. 25, 1901	Fugitive Offenders Act	458
Tr. Pr. 26, 1901	Alienations by Government of South African Republic	461
Tr. Pr. 27, 1901	Leases and Mortgages' Exemption from Rent or Interest	462
Tr. Pr. 32, 1901	Powers Superintendent of Natives	463
Tr. Pr. 34, 1901	Repeal of Laws	464
Tr. Pr. 35, 1901	Coloured Persons' Exemption	484
Tr. Pr. 37, 1901	Native Passes	486
Tr. Pr. 38, 1901	Labour Agents and Compound Overseers ..	496
1902.		
Tr. Pr. 5, 1902	Expropriation of Lands and Arbitration Clauses	503
Tr. Pr. 7, 1902	Pretoria Municipal	515
Tr. Pr. 8, 1902	Transfer Duty	528
Tr. Pr. 9, 1902	School Committees	547
Tr. Pr. 11, 1902	Bills of Exchange	549
Tr. Pr. 12, 1902	Stamp Duties Amendment	577
Tr. Pr. 13, 1902	Days of Grace	592
Tr. Pr. 14, 1902	Administration of Justice	593
Tr. Pr. 15, 1902	Interpretation of Laws	608
Tr. Pr. 16, 1902	Evidence	612
Tr. Pr. 17, 1902	Sheriff	623
Tr. Pr. 20, 1902	Imperial Colonial and Republican Forces Burial Grounds	626

Chronological List of Contents.

No. of Law, etc.	Subject.	Page.
Tr. Pr. 21, 1902 ..	Magistrates' Court	628
Tr. Pr. 22, 1902 ..	Patents	669
Tr. Pr. 23, 1902 ..	Trade Marks Registration	690
Tr. Pr. 24, 1902 ..	Copyright Military Maps	697
Tr. Pr. 25, 1902 ..	Native Marriages Amendment	698
Tr. Pr. 26, 1902 ..	Stamp Duty Amendment	699
Tr. Pr. 27, 1902 ..	Transfer Duty Amendment	700
Tr. Pr. 28, 1902 ..	Administration of Estates	701
Tr. Pr. 29, 1902 ..	Patents Amendment	742
Tr. Pr. 31, 1902 ..	Legalization of Marriages	743
Tr. Pr. 32, 1902 ..	Interest on Mortgage Bonds	745
Tr. Pr. 33, 1902 ..	Post Office Savings Bank	746
Tr. Pr. 34, 1902 ..	Profits Tax (Gold Mines)	754
Tr. Pr. 36, 1902 ..	Lunacy	759
Tr. Pr. 37, 1902 ..	Contracts—Extension of Time	776
Tr. Pr. 39, 1902 ..	Johannesburg Municipality Amendment	777
Ord. 1, 1902 ..	Officials Duties	781
Ord. 2, 1902 ..	Establishment of the Supreme Court and High Court	782
Ord. 3, 1902 ..	Native Commissioners Jurisdiction	784
Ord. 7, 1902 ..	Transfer of Certain Ground to Dutch Reformed Church	785
Ord. 8, 1902 ..	Amending Law 16, 1895 (Pretoria Cabs)	786
Ord. 9, 1902 ..	Amending Law 12, 1899 (Bills of Costs)	787
Ord. 10, 1902 ..	Jury Ordinance	788
Ord. 11, 1902 ..	Arrear Licence Moneys on Claims and Stands	796
Ord. 14, 1902 ..	Stamp Duty Further Amendment	799
Ord. 16, 1902 ..	National Bank of South Africa, Ltd.	800
Ord. 17, 1902 ..	Diseases of Stock	801
Ord. 18, 1902 ..	Licence Moneys on Claims and Stands	803
Ord. 19, 1902 ..	Crown Property	804
Ord. 23, 1902 ..	Customs Management	805
Ord. 24, 1902 ..	Lieutenant-Governor's Official Duties	819
Ord. 26, 1902 ..	Legalization of Marriages	820
Ord. 27, 1902 ..	Stadsraad (Johannesburg) Liabilities Liquidation	822
Ord. 28, 1902 ..	Natives' Relief	823
Ord. 30, 1902 ..	Commissions' Powers (Johannesburg Insanitary Area)	825
Ord. 31, 1902 ..	Pretoria Municipal Proclamation Amendment	827
Ord. 32, 1902 ..	Liquor Licensing	828
Ord. 34, 1902 ..	Johannesburg Municipality—Duties of Chairman	859
Ord. 36, 1902 ..	Pretoria Prison (Appointment of Governor)	860
Ord. 37, 1902 ..	Civil Service—Appointments during incapacity, etc.	861
Ord. 38, 1902 ..	Indemnity and Peace Preservation	862
Ord. 39, 1902 ..	Concentration Camps and Military Structures	868
Ord. 42, 1902 ..	Mortgage Bonds	870

Chronological List of Contents.

No. of Law, etc.	Subject.	Page.
Ord. 43, 1902 ..	Natives' Night Passes	871
Ord. 45, 1902 ..	Settlers	872
Ord. 46, 1902 ..	Naturalization of Aliens	891
Ord. 47, 1902 ..	Magistrates' Court Proclamation Amendment	894
Ord. 48, 1902 ..	Telegraph Messages Protection	895
Ord. 49, 1902 ..	Newspaper Registration	896
Ord. 50, 1902 ..	Licensing Law Amendment	899
1903.		
Ord. 1, 1903 ..	Criminal Procedure Code	900
Ord. 2, 1903 ..	Liquor Licensing Amendment	969
Ord. 3, 1903 ..	Johannesburg Municipality Borrowing Powers	970
Ord. 5, 1903 ..	Peace Preservation	986
Ord. 8, 1903 ..	Customs Duty (Sugar) Suspension	989
Ord. 9, 1903 ..	Johannesburg Municipality Special Borrowing Powers	990
Ord. 10, 1903 ..	Superior Courts Criminal Jurisdiction	991
Ord. 11, 1903 ..	Trigonometrical Survey	994
Ord. 12, 1903 ..	Customs Duty Colonial Produce Suspension ..	996
Ord. 13, 1903 ..	Appropriation	997
Ord. 14, 1903 ..	Wills	1000
Ord. 15, 1903 ..	Magistrates' Courts (Bail)	1002
Ord. 17, 1903 ..	Liquor Licensing Further Amendment	1004
Ord. 19, 1903 ..	Johannesburg Insanitary Area Expropriation	1006
Ord. 20, 1903 ..	Railway Expropriation of Lands	1014
Ord. 21, 1903 ..	Johannesburg Municipality, Plan of Townships	1019
Ord. 22, 1903 ..	Indemnity (Burgher)	1021
Ord. 23, 1903 ..	Johannesburg Municipality Borrowing Powers Amendment	1022
Ord. 25, 1903 ..	Military Manoeuvres	1023
Ord. 27, 1903 ..	Native Pass Proclamation Amendment	1026
Ord. 28, 1903 ..	Jury Ordinance, 1902, Amendment	1027
Ord. 29, 1903 ..	Legalization of Marriages of Coloured Persons	1028
Ord. 31, 1903 ..	Transvaal Guaranteed Loan	1029
Ord. 32, 1903 ..	Rand Water Board Incorporation	1032
Ord. 33, 1903 ..	National Bank Concession	1039
Ord. 35, 1903 ..	Judges' Pensions	1044
Ord. 36, 1903 ..	Magistrates' Courts—Contempt of Court	1046
Ord. 37, 1903 ..	Public Holidays	1047
Ord. 38, 1903 ..	Municipalities Elections	1048
Ord. 39, 1903 ..	Jury Ordinance, 1902, Further Amendment ..	1082
Ord. 40, 1903 ..	Revision of Laws	1083
Ord. 43, 1903 ..	Local Authorities Rating	1087
Ord. 44, 1903 ..	Deserted Wives and Children Protection	1098
Ord. 45, 1903 ..	Juvenile Offenders', Removal and Apprenticeship	1102
Ord. 46, 1903 ..	Immorality	1105
Ord. 47, 1903 ..	Merchandise Marks	1112

Chronological List of Contents.

No. of Law, etc.	Subject.	Page.
Ord. 48, 1903	.. Appropriation	1121
Ord. 51, 1903	.. Crown Liabilities	1122
Ord. 52, 1903	.. Malmani Gold Fields Commission	1123
Ord. 53, 1903	.. Hatherley Distillery (Cancellation of Con- cession)	1125
Ord. 55, 1903	.. Land Surveyors Admission	1128
Ord. 57, 1903	.. Crown Land Disposal	1129
Ord. 58, 1903	.. Municipal Corporations	1135
Ord. 59, 1903	.. Explosives Importation	1162
Ord. 61, 1903	.. Appropriation	1172
Ord. 62, 1903	.. Johannesburg Municipality Further Powers ..	1174
Ord. 63, 1903	.. Diamond Trade	1178
Ord. 64, 1903	.. Municipalities Powers of Expropriation ..	1199
Ord. 66, 1903	.. Precious Stones	1209
Ord. 68, 1903	.. Liquor Licensing (Railway Employees and Amending)	1229
Ord. 69, 1903	.. Jurors (Witwatersrand District)	1230
1904.		
Ord. 1, 1904	.. Attorney's Admission (Amendment)	1231
Ord. 3, 1904	.. Trade Marks Registration Amendment ..	1233
Ord. 4, 1904	.. Correction of Errors in Laws	1234
Ord. 5, 1904	.. Customs Management Ordinance, 1902, Amend- ment	1235
Ord. 6, 1904	.. Stock Theft	1236
Ord. 8, 1904	.. Examining Board (Survey Examinations) ..	1244
Ord. 9, 1904	.. Census	1245
Ord. 10, 1904	.. Naturalization of Aliens (Amendment) ..	1249
Ord. 12, 1904	.. Magistrates' Court Proclamation Amendment	1251
Ord. 14, 1904	.. Town Lands	1254
Ord. 15, 1904	.. Great Stock Brands	1256
Ord. 16, 1904	.. Diseases of Plants Prevention	1268
Ord. 17, 1904	.. Labour Importation	1269
Ord. 18, 1904	.. Land Titles	1282
Ord. 19, 1904	.. Resident Justices of the Peace, and Justices of the Peace	1284
Ord. 21, 1904	.. Law of Evidence Proclamation Amendment ..	1288
Ord. 22, 1904	.. Supreme Court Appellate Jurisdiction Exten- sion (Repealing)	1289
Ord. 23, 1904	.. Leprosy	1290
Ord. 24, 1904	.. Arbitration	1298
Ord. 25, 1904	.. Occupation Farms	1305
Ord. 26, 1904	.. Crimes	1312
Ord. 27, 1904	.. Rabies	1319
Ord. 28, 1904	.. Local Authorities and Plague Committee Vali- dation	1321
Ord. 29, 1904	.. Medical Dental and Pharmacy	1332
Ord. 31, 1904	.. Administration of Justice Amendment ..	1350

Chronological List of Contents.

No. of Law, etc.	Subject.	Page.
Ord. 32, 1904 ..	Appropriation	1352
Ord. 33, 1904 ..	Appropriation	1353
Ord. 34, 1904 ..	Appropriation	1355
Ord. 35, 1904 ..	Appropriation	1357
Ord. 36, 1904 ..	Prisoners' Detention	1359
Ord. 37, 1904 ..	Volunteer Corps	1360
Ord. 38, 1904 ..	Cattle Disease (East Coast Fever)	1369
Ord. 39, 1904 ..	Marriage Law Amendment	1375
Ord. 40, 1904 ..	Stamp Duties Amendment	1376
Ord. 41, 1904 ..	Municipal Corporations' Amendment	1379
Ord. 43, 1904 ..	Railway Construction Prohibition Law Amendment	1388
Ord. 44, 1904 ..	Local Authorities Roads	1389
Ord. 45, 1904 ..	Local Authorities Rating Amendment	1400
Ord. 47, 1904 ..	Criminal Procedure Amendment	1402
Ord. 48, 1904 ..	Rand Water Board Extended Powers.. .. .	1403
Ord. 49, 1904 ..	Municipalities Elections Amendment	1435
Ord. 50, 1904 ..	Pretoria Municipality Extended Powers	1437
Ord. I (Priv.), 1904	Johannesburg Municipality Borrowing Powers Further Amendment	1438
Ord. II (Priv.), 1904	Institute of Land Surveyors' Incorporation ..	1439
Ord. III (Priv.), 1904	Accountants	1444
Ord. IV (Priv.), 1904	Johannesburg Municipality Borrowing Powers Amendment	1451
Ord. V (Priv.), 1904	Germiston and Georgetown	1452
1905.		
Ord. 1, 1905 ..	Circuit Courts Procedure	1459
Ord. 2, 1905 ..	Town Lands Amendment	1460
Ord. 3, 1905 ..	Epidemic Disease and Hospital Committees	1465
Ord. 4, 1905 ..	Explosives	1468
Ord. 5, 1905 ..	Insolvency Law Amendment	1478
Ord. 6, 1905 ..	Game Preservation	1480
Ord. 8, 1905 ..	Appropriation	1489
Ord. 9, 1905 ..	Appropriation	1490
Ord. 10, 1905 ..	Appropriation	1492
Ord. 11, 1905 ..	Appropriation	1494
Ord. 12, 1905 ..	Appropriation	1496
Ord. 13, 1905 ..	Occupation Farms Amendment	1498
Ord. 14, 1905 ..	Transfer Duty Amending	1499
Ord. 15, 1905 ..	Administration of Estates Proclamation Amendment	1502
Ord. 16, 1905 ..	Stamp Duties Amendment	1506
Ord. 17, 1905 ..	Municipal Amending	1510
Ord. 18, 1905 ..	Medical, Dental and Pharmacy Amendment..	1516
Ord. 20, 1905 ..	Prevention of Crimes	1518
Ord. 21, 1905 ..	Selati Railway Debentures Redemption	1522
Ord. 22, 1905 ..	War Stores (Commission)	1523

Chronological List of Contents.

No. of Law, etc.	Subject.	Page.
Ord. 23, 1905 ..	Revenue Licences	1525
Ord. 24, 1905 ..	Johannesburg Lands	1530
Ord. 25, 1905 ..	Premier (Transvaal) Diamond Mining Com- pany, Water	1532
Ord. 26, 1905 ..	Municipalities Elections Amendment ..	1534
Ord. 27, 1905 ..	Labour Importation Amendment	1540
Ord. 29, 1905 ..	Railway Dwellings Rating	1544
Ord. 30, 1905 ..	Rand Water Board Extended Powers Amend- ment	1545
Ord. 32, 1905 ..	Coloured Labourers Health Regulations ..	1546
Ord. 33, 1905 ..	Legalization of Marriages	1548
Ord. 34, 1905 ..	Pretoria and Military Water Supply	1551
Ord. I (Priv.), 1905 ..	Constitution of the Incorporated Law Society of the Transvaal	1554
Ord. II (Priv.), 1905	Johannesburg Municipal	1564
1906.		
Ord. 1, 1906 ..	Foreign Enlistment Act, 1870 (Application to Colony)	1578
Ord. 2, 1906 ..	Neighbouring Colonies Evidence	1586
Ord. 4, 1906 ..	Customs Amendment	1590
Ord. 5, 1906 ..	Fish Preservation	1604
Ord. 6, 1906 ..	Prisons and Reformatories	1606
Ord. 7, 1906 ..	Epidemic Diseases and Hospital Committees Amending	1623
Ord. 8, 1906 ..	Liquor Licensing Amendment	1624
Ord. 12, 1906 ..	Labour Importation Amendment	1627
Ord. 13, 1906 ..	Crown Land Disposal Amendment	1628
Ord. 14, 1906 ..	Appropriation	1629
Ord. 15, 1906 ..	Appropriation	1630
Ord. 16, 1906 ..	Appropriation	1631
Ord. 17, 1906 ..	Appropriation	1634
Ord. 18, 1906 ..	Appropriation	1635
Ord. 19, 1906 ..	Births, Marriages and Deaths Registration ..	1637
Ord. 21, 1906 ..	Rand Water Board Extended Powers Amend- ment	1649
Ord. 22, 1906 ..	Local Authorities Rating Amendment ..	1650
Ord. 24, 1906 ..	Municipalities Elections Amendment ..	1651
Ord. 25, 1906 ..	Opium Trade Regulation	1652
Ord. 26, 1906 ..	Municipal Amending	1656
Ord. 27, 1906 ..	Appropriation	1667
Ord. 28, 1906 ..	General Revenue Amendment	1668
Ord. 30, 1906 ..	Pensions	1669
Ord. I (Priv.), 1906	Pretoria Municipal	1676
Ord. II (Priv.), 1906	Johannesburg Municipal	1680

NOTE TO INDEX

Attention is drawn to the note with reference to certain 1903, 1905, and 1906 Ordinances relating to Mining Regulations and Certificates which appears immediately after the title-page of this volume.

STATUTE LAW OF THE TRANSVAAL.

1900.

PROCLAMATION No. 6 of 1900.

NATIVE MARRIAGES BY CHRISTIAN RIGHTS.

(Dated 29th September, 1900.)

WHEREAS Law No. 3 of 1897 makes provision for the Marriage of Natives by Christian Rites :

And whereas it is desirable to appoint some person or persons as Marriage Officer under the said Law, and who can also explain to natives the effect of such marriage;

Now therefore, I, John Grenfell Maxwell, Major-General, Military Governor of Pretoria, by virtue of the authority committed to me, do hereby proclaim and make known as follows:—

*(1) Any natives desirous of being married in accordance with Christian Rites, shall, before the solemnization of their marriage by the officer appointed by the Government under article *two* of the Law, or before the issue of a certificate by such officer for the solemnization of the marriage by a clergyman or minister authorized thereto by the Government, subscribe and declare to the particulars required in the following schedule:—

Form of declaration by natives marrying according to Christian rites.

(A)

I hereby declare that the nature and obligation of the marriage contract I desire to enter into has been fully explained to and understood by me, and I am aware that, should I contract another marriage during the lifetime of my spouse without having previously obtained a divorce, I shall be liable to prosecution for bigamy and to imprisonment with hard labour for five years or such other time as may be decreed by the Court.

Witnessed and interpreted by

.....
.....

Sworn before me,

.....

Marriage Officer,
Justice of the Peace.

* Marriages solemnized under Law 3 of 1897 by Magistrates or District Commissioners appointed by Military Governors or by ministers of religion duly authorized by a Government Notice issued subsequent to 9th June, 1900, are legalized by Pr. Tr. 31 of 1902.

Appointment
of native
marriage
officer for
Pretoria.

*(2) Under and by virtue of the provisions of article *two* of the Law hereinbefore referred to, Percy Cazenove, Lieutenant, 15th Regiment Imperial Yeomanry, Staff Officer for Native Passes, presently at Pretoria, is hereby appointed to be Marriage Officer for the Town and District of Pretoria for Natives desirous of being joined together in matrimony by Christian Rites, and to be *ex-officio* Justice of the Peace within the Town and District of Pretoria.

Appoint-
ments of
native mar-
riage officers
of S.A.R.
confirmed.

*(3) All appointments by the Government of the South African Republic of Clergymen or Ministers as Marriage Officers under article *six* of the Law No. 3 of 1897 are hereby confirmed.

* Marriages solemnized under Law 3 of 1897 by Magistrates or District Commissioners appointed by Military Governors or by ministers of religion duly authorized by a Government Notice issued subsequent to 9th June, 1900, are legalized by Pr. Tr. 31 of 1902.

†PROCLAMATION No. 15 OF 1900.

ANNEXATION OF THE SOUTH AFRICAN REPUBLIC.

WHEREAS certain Territories in South Africa, hitherto known as the South African Republic, have been conquered by Her Majesty's Forces, and it has seemed expedient to Her Majesty that the said territories should be annexed to, and should henceforth form part of Her Majesty's Dominions, and that I should provisionally and until Her Majesty's pleasure is more fully known, be appointed Administrator of the said Territories, with power to take all such measures, and to make and enforce such Laws as I may deem necessary for the peace, order, and the good government of the said Territories.

Now, therefore, I, Frederick Sleigh, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, Commanding-in-Chief of Her Majesty's Forces in South Africa, by Her Majesty's Command, and in virtue of the power and authority conferred on me in that behalf by Her Majesty's Royal Commission, dated the fourth day of July, nineteen hundred, in accordance with Her Majesty's instructions thereby and otherwise signified to me, from and after the publication hereof, do proclaim that the Territories known as the South African Republic are annexed to and form part of Her Majesty's Dominions, and that provisionally, and until Her Majesty's pleasure is fully declared, the said Territories will be administered by me with such powers as aforesaid. Her Majesty is pleased to direct that the new Territories shall henceforth be known as The Transvaal.

† See Verecigning Peace Treaty (*infra*).

PROCLAMATION No. 21 of 1900.*

By FIELD-MARSHAL LORD ROBERTS, Commander-in-Chief.

(Dated 8th October, 1900.)

Preamble.

†WHEREAS it is expedient, in the interest of the Public Health, that the occurrence of all cases of infectious or contagious diseases should be notified, in order that measures may be promptly taken for preventing the spread of such diseases;

Now, therefore, I, Frederick Sleight, Baron Roberts of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, Commander-in-Chief of Her Majesty's troops in South Africa, do hereby declare, proclaim, and make known as follows:—

Notification by occupiers of infectious disease.

1. Every occupier of any house, building, premises, wagon, cart, or tent within the jurisdiction of any municipality or township, on the occurrence of any case of any of the hereinafter specified contagious or infectious diseases within the precincts of any such house, building, or premises, or in any wagon, cart or tent, shall notify the same in writing to the magistrate or burgomaster, or to some officer duly authorized for the purpose, within twenty-four hours of the occurrence of such case of contagious or infectious disease becoming known to him.

The written notice aforesaid shall contain the full name, sex, age, race, and address of the affected person, the nature of the disease, the date of its occurrence; and he shall furthermore furnish any other particulars relating to the case as may be required of him by any duly authorized officer.

The notice may be delivered either by hand or through the post office.

Notification by medical practitioner of infectious disease.

2. Every medical practitioner attending, or called upon to attend, any person suffering from any of the hereinafter specified diseases shall within twenty-four hours of becoming aware of the nature of the disease, forward to the magistrate or burgomaster, or to some officer *duly*† appointed for the purpose, a certificate in the form set forth in the accompanying schedule, specifying the nature of the disease from which, in his opinion, the patient is suffering.

Penalty for failure.

3. Any occupier or medical practitioner, as aforesaid, negligently or wilfully concealing a case of any of the hereinafter mentioned diseases shall be liable to penalty of five pounds sterling.

* Generally amended by Act 22, 1908.

† By Ord. II (priv.) 1906 sec. 41 (20), Johannesburg Municipality were empowered to make byelaws for preventing the spread of infectious disease, and by Proc. Tr. 7 of 1902 sec. 19 sub-sec. (10), Pretoria Municipality acquire such power; under Ord. 58 of 1903 sec. 42 sub-sec. (15) all Municipalities have this power.

‡ As in *Gazette*, 10th October, 1900.

4.* For the purpose of this Proclamation the following diseases, and any other diseases which may from time to time be proclaimed by the Governor, shall be held to be infectious or contagious diseases, viz. :—

Notifiable diseases.

- (a) Smallpox, chicken-pox, and amaas.
- (b) Typhus, typhoid, enteric, gastric, or typho-malarial fever.
- (c) Malaria.
- (d) Scarlet fever and scarletina.
- (e) Puerperal fever and puerperal septioemia.
- (f) Dysentery.
- (g) Diphtheria and membranous croup.
- (h) Erysipelas.
- (i) Leprosy.

5. Medical Practitioners shall be entitled to a fee of 2s. 6d. for each case notified in accordance with the terms of this Proclamation, and any Medical Practitioner can obtain a book of forms of certification on personal or written application to the officer appointed for carrying out this Proclamation within the district in which such medical practitioner resides.

Fees of medical practitioner for notification.

[SCHEDULE.]

Name of Municipality or Township.....
 (a).....190.....
 To the (b).....

I, the undersigned, a legally registered Practitioner of Medicine, hereby notify that on (a)....., 190....., I was called upon to attend (c)....., sex (d)....., aged (e)....., race (f)....., living at (g)....., and that in my opinion he is suffering from the disease known as (h)....., and that the disease is probably caused by (i).....

Signed.....
 Address

(a) Insert date. (b) Name and address of Officer appointed under the Proclamation. (c) Insert full name. (d) Male or female, as the case may be. (e) Age in years; if an infant under twelve months, state age in months. (f) If race cannot be given exactly, add E. (White or European) or C. (Coloured). (g) Give fullest possible address. (h) Name of disease. (i) The Medical Practitioner's opinion as to the cause is very desirable, but it is optional.

* Plague, cholera, intermittent and relapsing fevers, were declared contagious diseases by Pr. (Admn.) 20, 1903, (*Gazette*, 12th June, 1903); and ankylostomiasis (dochmiasis) by Pr. (Admn.) 43, 1904, *Gazette*, 5th August, 1904; under Govt. Notice 909, 1908 (*Gazette*, 18th September, 1908), the following diseases, viz., chicken pox, amaas, malarial fever (malaria), typho-malarial fever, intermittent and relapsing fever, and ankylostomiasis (dochmiasis) ceased to be notifiable in all districts of the Transvaal, and dysentery in the municipal areas of Amersfoort, Barberton, Boksburg, Germiston, Johannesburg, Krugersdorp, Lichtenburg, Middelburg, Potchefstroom, and Pretoria. By Govt. Notice No. 239, 1910 (*Gazette*, 4th March, 1910) anthrax in man is declared an infectious disease and notifiable throughout the Transvaal.

A.D. 1900.]

Penny Postage.

[Proc. No. 26.]

Repealed by Act 10 of 1911

PROCLAMATION No. 26 of 1900.

By Field-Marshal LORD ROBERTS, Commander-in-Chief.

(Dated 18th November, 1900.)

IMPERIAL PENNY POSTAGE.

UNDER and by virtue of the powers vested in me, I, Frederick Sleigh, Baron Roberts, of Kandahar and Waterford, K.P., G.C.B., G.C.S.I., G.C.I.E., V.C., Field-Marshal, Commanding-in-Chief Her Majesty's Forces in South Africa, do hereby proclaim, declare and make known that on and after the 1st December next the rate of postage on letters posted in the Transvaal and Orange River Colonies and addressed to the United Kingdom and places hereafter to be notified by the administrators of civil posts in the above-mentioned Colonies, will be reduced to one penny per half ounce or fraction thereof.

The existing Post Office Law, No. 18, 1898, of the South African Republic will, therefore, be amended accordingly.

1901.

VERREENIGING PEACE TREATY.

General Lord KITCHENER of Khartoum, Commanding-in-Chief, and His Excellency Lord MILNER, High Commissioner, on behalf of the BRITISH GOVERNMENT,

and

Messrs. S. W. BURGER, F. W. REITZ, LOUIS BOTHA, J. H. DE LA REY, L. J. MEYER, and J. C. KROGH, acting as the GOVERNMENT of the SOUTH AFRICAN REPUBLIC,

and

Messrs. W. J. C. BREBNER, C. H. DE WET, J. B. M. HERTZOG, and C. H. OLIVIER, acting as the GOVERNMENT of the ORANGE FREE STATE,

On behalf of their respective BURGHERS,

Desirous to terminate the present hostilities, agree on the following Articles:—

1. The Burgher Forces in the field will forthwith lay down their arms, handing over all guns, rifles, and munitions of war, in their possession or under their control, and desist from any further resistance to the authority of His Majesty King Edward VII., whom they recognise as their lawful Sovereign.

The manner and details of this surrender will be arranged between Lord Kitchener and Commandant-General Botha, Assistant Commandant-General De la Rey and Chief Commandant de Wet.

2. Burghers in the field outside the limits of the Transvaal and Orange River Colony, and all prisoners of war at present outside South Africa, who are burghers, will, on duly declaring their acceptance of the position of subjects of His Majesty King Edward VII., be gradually brought back to their homes as soon as transport can be provided and their means of subsistence ensured.

3. The burghers so surrendering or so returning will not be deprived of their personal liberty, or their property.

4. No proceedings, civil or criminal, will be taken against any of the burghers so surrendering or so returning for any acts in connection with the prosecution of the war. The benefit of this clause will not extend to certain acts contrary to the usage of war which have been notified by the Commander-in-Chief to the Boer Generals, and which shall be tried by Court-Martial immediately after the close of hostilities.

5. The Dutch language will be taught in public schools in the Transvaal and the Orange River Colony where the parents of the children desire it, and will be allowed in Courts of Law when necessary for the better and more effectual administration of justice.

6. The possession of rifles will be allowed in the Transvaal and Orange River Colony to persons requiring them for their protection on taking out a licence according to law.

7. Military administration in the Transvaal and Orange River Colony will at the earliest possible date be succeeded by civil government, and, as soon as circumstances permit, representative institutions, leading up to self-government, will be introduced.

8. The question of granting the franchise to natives will not be decided until after the introduction of self-government.

9. No special tax will be imposed on landed property in the Transvaal and Orange River Colony to defray the expenses of the war.

10. As soon as conditions permit, a Commission, on which the local inhabitants will be represented, will be appointed in each district of the Transvaal and Orange River Colony, under the presidency of a magistrate or other official, for the purpose of assisting the restoration of the people to their homes and supplying those who, owing to war losses, are unable to provide for themselves, with food, shelter, and the necessary amount of seed, stock, implements, etc., indispensable to the resumption of their normal occupations.

His Majesty's Government will place at the disposal of these Commissions a sum of three million pounds sterling for the above purposes, and will allow all notes, issued under Law No. 1 of 1900 of the Government of the South African Republic, and all receipts given by the officers in the field of the late Republics or under their orders, to be presented to a Judicial Commission, which will be appointed by the Government, and if such notes and receipts are found by this Commission to have been duly issued in return for valuable consideration they will be received by the first-named Commissions as evidence of war losses suffered by the persons to whom they were originally given. In addition to the above-named free grant of three million pounds, His Majesty's Government will be prepared to make advances as loans for the same purposes, free of interest for two years, and afterwards repayable over a period of years with 3 per cent. interest. No foreigner or rebel will be entitled to the benefit of this clause.

Signed at Pretoria this thirty-first day of May in the Year of Our Lord One thousand Nine hundred and Two.

(Signed)

KITCHENER OF
KHARTOUM.
MILNER.

S. W. BURGER.
F. W. REITZ.
LOUIS BOTHA.
J. H. DE LA REY.
L. J. MEYER.
J. C. KROGH.
C. R. DE WET.
J. B. M. HERTZOG.
W. J. C. BREBNER,
C. H. OLIVIER.

PROCLAMATION No. 8 OF 1901.

By His Excellency Sir ALFRED MILNER, His Majesty's High
Commissioner for South Africa, etc.

(Dated the 9th April, 1901.)

By virtue of the authority in me vested, I do hereby order,
direct, and declare as follows:—

1. The *Government Gazette* at present printed and published at the Government Printing Works, Pretoria, shall be the *Government Gazette* for this Colony; and all Proclamations by me, and Government Notices, shall be published in the said *Gazette* for general information.

Government Gazette.

Publication of Proclamations.

2. Every Proclamation by me shall on such publication be law, and shall commence and take effect from and after the date thereof, unless otherwise expressly provided for.

Date at which Proclamations take effect.

3. The expression "*Gazette*" in any Proclamation, Notice, or Regulation shall be taken to mean the said *Government Gazette*.

4. All notices or advertisements which, in virtue or in terms of any law at present in force within this Colony, are required to be published in the *Staatscourant*, shall henceforth be published in the *Government Gazette* aforesaid.

Notices and advertisements.

Proclamation
(Trans.) No. 2
of 1901.

PROCLAMATION No. 2 of 1901.

By His Excellency BARON KITCHENER OF KHARTOUM, Acting High Commissioner for South Africa and Acting Administrator of the Transvaal, etc.

(Dated 16th May, 1901.)

Preamble.

WHEREAS it is necessary to provide for the signing of special licences to marry and to amend article *three* of Law No. 3 of 1871 as amended by article *six* of Law No. 22 of 1894:

Now, therefore, by virtue of the authority in me vested, I do hereby declare, proclaim, and make known as follows:—

Amendment
of Marriage
Laws as to
officer grant-
ing special
licences.

1. The words “the Secretary to the Transvaal Administration” shall be substituted for the words “the Under State Secretary” appearing in article *three* of Law No. 3 of 1871, as amended by article *six* of Law No. 22 of 1894.

Validation of
special
licences
signed by
military
governors.

2. All special licences to marry which before the date of this Proclamation have been signed by the Military Governor of Pretoria or of Johannesburg or by the Secretary or Legal Adviser to the Transvaal Administration shall be of the same force and effect in all respects as though the same had been signed by the Secretary of the Transvaal Administration after the date of this Proclamation.

PROCLAMATION No. 10 of 1901.*

Proclamation (Trans.) No. 10 of 1901.

By His Excellency BARON KITCHENER OF KHARTOUM, Acting High Commissioner for South Africa and Acting Administrator of the Transvaal, etc.

(Dated 24th June, 1901.)

WHEREAS no adequate provision exists in the Law of this Colony for the holding of inquests in cases where persons die suddenly, or are found dead, or are supposed or suspected to have come by their death by violence or otherwise than in a natural way;

Preamble.

Now, therefore, by virtue of the authority in me vested, I do hereby declare, proclaim, and make known as follows:—

1. In all cases in which it shall come to the knowledge of any resident magistrate that there is at or within the distance of six miles from the ordinary and stated place for holding his Court, the dead body of any person who died suddenly, or was found dead, or is supposed or suspected to have come by his death by violence or otherwise than in a natural way, such magistrate shall, as soon as possible, proceed in person to the spot where the dead body is, and shall inspect the same and hold an inquest thereon, and if necessary shall cause the same, if interred, to be disinterred for the purpose of such inspection and inquest, and shall by the examination of witnesses ascertain the cause of death.

Duty of resident magistrate to hold inquests in certain cases.

2. In viewing the dead body the Resident Magistrate shall take careful note of all appearances, marks, and traces presented by it and about it which shall tend to show whether the deceased did or did not come by his death from violence, and, if from violence, whether the same was used by himself or by some other, and if by some other, who such other was, or how he may be discovered.

Duties in viewing the corpse.

3. The Resident Magistrate shall also cause the dead body to be examined as soon as possible by a regularly admitted medical man, if such can be procured, and if not, then by the best qualified person or persons that can be obtained.

Examination of corpse by medical practitioner.

4. The process for summoning witnesses to attend before any inquests shall be in substance as follows:—

Summoning of witnesses to inquest.

INQUEST FOR THE DISTRICT OF

To.....

Messenger of Resident Magistrate's

Court for.....

You are hereby required in His Majesty's name to summon A.B., of.....(describe him particularly),

* This Proclamation is repealed by Act 8, 1909, sec. 1, provided that notwithstanding such repeal it shall be deemed to remain in force for the purposes of the Workmen's Compensation Act, 1907, and of Ord. 6, 1906 (Prisons and Reformatories).

† By Ord. 16 of 1903 the powers, etc., of Resident Magistrates under this Proclamation were conferred on the Magistrate and Assistant Magistrate of Witwatersrand Native Court. See also Ord. 19, 1906, sec. 14.

that he appear before me on this the.....day of.....190...., in the forenoon (or afternoon as the case may be, stating the day and hour according to the fact), then and there to be examined at an inquest touching the death of C.D. (or " of a certain deceased person whose name is unknown ").

Herein fail not at your peril.

Dated at.....this.....day of190....

Resident Magistrate.

Penalty for disobedience to summons.

5. If any person summoned as a witness shall not attend pursuant to such a summons then such person so making default shall, unless some reasonable excuse be proved by oath or affidavit, be liable to be fined by such magistrate a sum not exceeding £25, or in default of payment to imprisonment with or without hard labour not exceeding one month, as such magistrate shall think fit; and such magistrate may, moreover, issue his warrant for the apprehension of the person so making default, which warrant shall be in substance as follows:—

To.....Police and other constables and officers of the law proper to the execution of criminal warrants:—

Whereas A.B. of (describe him particularly as in the summons) who was duly summoned to appear before me at (name the place as in the summons) at (state the time as in the summons) then and there to be examined at an inquest touching the death of C.D., or of a certain deceased person whose name is unknown, and hath refused and neglected so to do to the great delay and hindrance of justice: These are, therefore, in His Majesty's name to command you or some of you to apprehend and bring before me the body of the said A.B. that he shall be dealt with according to law; and for so doing this shall be your warrant.

Dated at.....this.....day of190....

Resident Magistrate.

Oath of witnesses.

6. The oath to be taken by witnesses appearing before the inquest, shall be administered by the magistrate and shall be as follows:—

"The evidence which you shall give to this inquest touching the death of C.D. (or of the deceased person name unknown regarding whom this inquest is held) shall be the truth, the whole truth and nothing but the truth; so help you God."

Contempt of Court.

7. All contempts committed by witnesses or others before or in regard of any inquest shall be punished in like manner *mutatis mutandis*, as contempts committed by witnesses and others before any Court of Resident Magistrate.

Evidence to be taken down in writing.

8. The evidence of each witness shall be taken down in writing by the magistrate or by the magistrate's clerk according as the magistrate shall think proper and direct.

9. Nothing in this Proclamation contained shall prevent any person authorized by law to issue warrants of apprehension or authorized to apprehend offenders or supposed offenders in that warrant from acting in all respects as regards such warrants or such offenders, and whether an inquest shall or shall not have been commenced precisely as if this Proclamation had not been issued.

Warrants of apprehension.

10. All witnesses, medical or otherwise, summoned or attending to give evidence before any inquest shall be entitled to receive their expenses precisely as if witnesses summoned to give evidence at a criminal trial.

Expenses of witnesses.

11. If the resident magistrate upon such inquest shall see reason to believe that the deceased person came by his death in any way which involved or amounted to some crime or offence upon the part of any person who can be made amenable to justice, the resident magistrate shall cause such person to be apprehended in order that criminal proceedings may be instituted against him. In all other cases the resident magistrate shall forward to the legal adviser to the Transvaal Administration the original evidence taken by him.

Apprehension for purposes of criminal proceedings.

12. As often as it shall come to the knowledge of any justice of the peace that there is at any spot within his jurisdiction the dead body of any person who died suddenly or was found dead, or is supposed or suspected to have come by his death by violence or otherwise than in a natural way, such justice of the peace shall forthwith, if such spot be at a distance of six miles or less from the ordinary place of holding a Court, report the fact to the resident magistrate of the district, but if such spot shall be more than six miles from the ordinary place of holding a Court, such justice of the peace shall himself, with all convenient speed, proceed to the spot where the dead body is, and shall inspect the same, and, if necessary, shall cause the same if interred, to be disinterred for the purpose of such inspection, and shall obtain all such information as shall be procurable for the purpose of ascertaining the cause of death.

Duty of justice of peace to report to resident magistrate.

13. In viewing the dead body the justice of the peace shall take careful note of all appearances, marks, and traces presented by it and about it which shall tend to show whether the deceased did or did not come by his death from violence, and if from violence, whether the same was used by himself or some other, and if by some other, who such other was, or how he may be discovered.

Viewing of corpse by justice of the peace.

14. It shall be the duty of the justice of the peace, where practicable, to cause the dead body to be examined as soon as possible by a regularly admitted medical man, if such can be procured, and if not, then by the best qualified person or persons that can be obtained, and such medical man or other qualified person shall be entitled to receive from the Receiver of Revenue for the district or area in which such justice of the peace has jurisdiction, his expenses precisely as if he had been summoned to give evidence at a criminal trial held at a place where he made such examination as aforesaid.

Justice of peace to have corpse examined by medical practitioner.

Report by
justice of
peace to
resident
magistrate.

15. The justice of the peace shall without delay report to the resident magistrate in detail the circumstances of the case in order that such magistrate may take such further steps if any as may be needful either to ascertain the cause of death or to bring to justice such person or persons as shall appear to have unlawfully caused such death.

Duty of
resident
magistrate
on receiving
such report.

16. Upon receiving such report as is in the last preceding section mentioned it shall be lawful for the resident magistrate, if in his opinion the circumstances of the case require it, to hold an inquest for the purpose of ascertaining the cause of death, and thereupon it shall be competent for the said magistrate to exercise all such power and functions and to perform all such duties in regard to the summoning and examination of witnesses and the inspection of the dead body as are hereinbefore provided in regard to cases occurring at or within a distance of six miles of the ordinary place of holding a Court.

Transmission
of report of
proceedings
to Attorney-
General.

17. As often as any case investigated by any justice of the peace shall be reported by him to any resident magistrate, and no inquest shall be held by such magistrate, and no criminal proceedings shall be instituted against any person upon any charge arising from or connected with the death of the deceased person, the resident magistrate shall transmit to the legal adviser to the Transvaal Administration the report of the justice of the peace, or a copy of it, together with such remarks upon the case, if any, as the resident magistrate shall think fit.

Fees of
justice of
peace.

18. Every justice of the peace shall, for the performance of the duties imposed on him by this Proclamation, be entitled to a fee of two guineas for every day or portion of a day whilst engaged in such performance as aforesaid, which sum shall be paid to him by the resident magistrate of the district or area for which the said justice of the peace has jurisdiction.

Resident
magistrate
includes
assistant
resident
magistrate.

19. For the purposes of this Proclamation the expression "resident magistrate", whenever it occurs, shall include "assistant resident magistrate".

Saving of
Mining
Regulations.

*20. Nothing in this Proclamation contained shall be taken to alter or repeal the regulations under Chapter XIX of Law No. 12 of 1898, dealing with mining regulations, save and except that the investigation directed by regulation 156 to be held by the public prosecutor shall be held by the resident magistrate or assistant resident magistrate of the district or area in which the place where the accident took place is situate, and all the provisions of sections *four to eleven* inclusive of this Proclamation shall apply *mutatis mutandis*, to the holding of such an investigation.

Short Title.

21. This Proclamation may be cited for all purposes as The Inquests Proclamation, 1901.

* Law No. 12 of 1898 was repealed by Ord. No. 54 of 1903.

PROCLAMATION No. 12 of 1901.

Proclamation
(Trans.) No.
12 of 1901.

By His Excellency BARON KITCHENER OF KHARTOUM, Acting High Commissioner for South Africa and Acting Administrator of the Transvaal, etc.

(Dated 1st July, 1901.)

WHEREAS prior to the commencement of present hostilities between His Majesty and the late South African Republic and Orange Free State contracts had been entered into between owners of farms and other lands in this Colony and certain other persons, by which rights were acquired to purchase such farms and lands or to purchase or lease the mining rights thereover with or without the right of prospecting for minerals and precious stones thereon;

Preamble.

And whereas as a rule the said contracts require that payments by way of rent or otherwise be made at certain fixed times in consideration and for the preservation of the said rights, and also that such rights be exercised within a certain time;

And whereas as a rule the said contracts further provide that in default of such payments as aforesaid, or in default of exercising such rights within the time stipulated therein, the said contracts would cease and determine;

And whereas owing to a state of war having arisen between His Majesty and the late South African Republic and Orange Free State holders of such rights as aforesaid were prevented from complying with the terms of the said contracts, more especially in respect of the making of such payments and the exercise of such rights as aforesaid, not only by reason of the fact that many of such holders, being British subjects, were compelled to leave the Transvaal at the commencement of the aforesaid hostilities, and were prohibited by law and warned by Proclamation of the High Commissioner from having any dealings with the enemy, but also by reason, *inter alia*, of the fact that such owners were absent from their farms on military service against His Majesty and could not be communicated with for the purpose of complying with the terms of the aforesaid contracts;

And whereas it appears to me to be just and equitable in the circumstances that some relief should be given to the holders of such rights as aforesaid;

Now therefore, by virtue of the authority in me vested, I do hereby declare, proclaim, and make known as follows:—

1. Save as is hereinafter mentioned in all contracts executed prior to the date of the commencement of hostilities between His Majesty and the late South African Republic and Orange Free State, to wit, the 11th day of October, 1899, by which rights were acquired to purchase farms and other lands situated in this Colony or to purchase or lease the

Extension of
time for
exercising
option
contracts.

mining rights thereover, with or without the right of prospecting thereon for minerals or precious stones, the period between the 11th day of October, 1899, and a *date to be hereafter notified in the *Gazette*, shall not be taken into account in calculating the period during which it was agreed between the contracting parties that such contracts were to be in force.

Savings.

2. All payments required by the said contracts to be made and which became or shall become due during the said period mentioned in the last preceding section, and all acts required to be performed in consideration and for the preservation of the rights acquired thereunder during the said period, and all rights required to be exercised at a time falling within the said period, may, save as hereinafter mentioned, be made, performed, and exercised as if the said period between the 11th of October, 1899, and the date notified in the *Gazette* as aforesaid did not exist, and as if the latter date were the 11th October, 1899; and all payments made, acts performed and rights exercised in terms of the said contracts as interpreted by this Proclamation, shall be deemed and taken to be for all such purposes a due compliance therewith.

In cases of neglect provisions of Proclamation not to apply.

3. Whenever it is proved to the satisfaction of any competent Court that the payments, acts, and rights mentioned in the last preceding section were not made, performed or exercised through the neglect of the person required to make, perform, and exercise them, and not because of any of the reasons mentioned in the preamble of this Proclamation or any reason due directly to the existence of the aforesaid hostilities, then the provisions of this Proclamation shall not apply.

* By Government Notice No. 223 of 1902, the 1st of June, 1902, was notified as the date from which time would again commence to run under the above section. This date was subsequently by Pr. Tr. 37 of 1902 changed to 1st August, 1902: and Government Notice No. 223 of 1902 was withdrawn.

PROCLAMATION No. 16 of 1901.

Proclamation
(Trans.) No.
16 of 1901.

By His Excellency BARON KITCHENER OF KHARTOUM, Acting
High Commissioner for South Africa, and Acting
Administrator of the Transvaal, etc.

(Dated 10th July, 1901.)

WHEREAS doubts have arisen as to the power of the Council
for the Municipality of Johannesburg, constituted under
Proclamation No. 16 of 1901, to collect assessment rates and
charges for sanitary services due and in arrear to the late
Town Council of Johannesburg, constituted under Law No. 9
of 1899, or to the officer in charge of the Municipal affairs of
Johannesburg appointed thereto by the Military Governor of
Johannesburg for the period between the 31st May, 1900, and
the 15th May, 1901;

Preamble.

And whereas it is desirable to remove all such doubts as
aforesaid;

Now, therefore, by virtue of the authority in me vested,
I do hereby declare, proclaim, and make known as follows:—

*1. All assessment rates and all charges for sanitary
services due and unpaid either to the late Town Council of
Johannesburg, constituted under Law No. 9 of 1899, or to the
officer in charge of the Municipal affairs of Johannesburg, as
aforesaid (during the period between the 31st May, 1900, and
the 15th May, 1901), shall be and are hereby vested in the
Council for the Municipality of Johannesburg constituted
under Proclamation No. 16 of 1901.

Arrears of
assessment
rates and
sanitary
charges vested
in Town
Council.

2. It shall be lawful for the said Council to demand
payment of such rates and charges as aforesaid from the
persons by whom they are due, and, on any such person
refusing to comply with such demand, it shall be competent
for the said Council to institute an action at law for the
recovery of the amount claimed to be due by such person in
the Court of the Resident Magistrate at Johannesburg, and
the said Court shall have jurisdiction to try any such action
as aforesaid although the rates and charges sued for became
due and payable prior to the 1st September, 1900,† anything
to the contrary in this respect in Proclamation No. 6 of 1901
notwithstanding.

Recovery of
such arrears.

* See also Ord. 27 of 1902, sec. 3, by which certain other rates and charges
due to the late Stadsraad are vested in the Council, and Ord. 62 of 1903, sec. 6, by
which the assets of late Stadsraad are vested in the Council.

† The 1st September, 1901, was a clerical error for 1st September, 1900: it is
corrected by Pr. Tr. 20 of 1901.

Proclamation
(Trans.) No.
23 of 1901.

PROCLAMATION No. 23 OF 1901.

By His Excellency BARON KITCHENER OF KHARTOUM, Acting High Commissioner for South Africa and Acting Administrator for the Transvaal, etc.

(Dated 12th August, 1901.)

Preamble.

WHEREAS it is desirable to provide for the vaccination of all natives employed in the areas heretofore under the jurisdiction of the Mining Commissioners at Johannesburg, Boksburg, and Krugersdorp, and hereinafter referred to as the Labour Districts of Johannesburg, Boksburg, and Krugersdorp respectively;

Now, therefore, by virtue of the authority in me vested, I do hereby declare, proclaim, and make known as follows:—

Power to
Governor to
make rules,
etc., as to
District and
Monthly
Passes for
natives in
Labour Dis-
tricts.

1. It shall be lawful for the Administrator of this Colony to make rules and regulations for the issue of District* and Monthly Passes to Natives† employed in the Labour Districts of Johannesburg, Boksburg, and Krugersdorp, in addition to those in force under Law No. 23 of 1899 for the purpose of securing the vaccination of such natives and to provide penalties for the contravention of any such regulations.

2. The said regulations shall, on publication in the *Gazette*, have the force of law.

3. The said regulations may at any time, by notice in the *Gazette*, be extended by the Administrator to any other Labour Districts in this Colony.

‡ REGULATIONS FOR THE VACCINATION OF NATIVES IN LABOUR DISTRICTS.

In these regulations

“employer” shall mean any person who hires or contracts with a native for the performance of any work or service, and in the case of a firm or company shall mean the responsible manager thereof, or, if there be no manager, then the person registered as responsible for the control, management, or direction thereof, and in the case of the civil or military services shall mean the officer responsible for the control and management of the native employed;

“medical officer” shall mean a registered medical practitioner appointed by the Colonial Secretary to vaccinate natives in a labour district;

“pass office” shall mean any place in a labour district appointed for the issue to natives of passes in that district;

“pass officer” shall mean any person employed by or under the authority of the Native Affairs Department who has authority to issue passes to natives in a labour district;

“vaccination station” shall mean
(a) any pass office in a labour district;

* The term “District Pass” is by sec. 9 of Tr. Pr. 37 of 1901 to be read as “Labour Identification Passport.”

† As to definition of “Native” see Tr. Pr. 37, 1901, secs. 4 and 9, and Ord. 27 of 1903, sec. 2.

‡ These regulations were substituted by Govt. Notice No. 77, 1910, and all previous regulations repealed; by Govt. Notice No. 189, 1910 (*Gazette*, 18th February, 1910), these regulations have been applied to the labour districts of Johannesburg, Germiston, Boksburg, Springs, Krugersdorp, Witbank, Bayton, Klerksdorp, Heidelberg, and Vereeniging.

- (b) any Government native labour bureau in a labour district to which a medical officer is appointed ;
- (c) The compound of the Witwatersrand Native Labour Association in Johannesburg.

1. Every native employed in a labour district shall attend at such vaccination station and at such time as a pass officer may direct by notice in writing (in the form prescribed in Annexure "A") endorsed on any pass issued under the Pass Regulations, and such notice shall be signed and dated by the pass officer. Any such endorsement made on the pass shall be cancelled by the medical officer when the native has been passed as vaccinated.

2. Before registering any contract upon a passport for a native to be employed in a labour district the pass officer may cause the native to be examined by a medical officer.

3. If the medical officer is satisfied that the native has been vaccinated in such manner that he is likely to be immune from smallpox for a period of two years, he shall endorse the passport of that native with the words "passed vaccinated", adding the date and his signature to that endorsement.

If the medical officer is not so satisfied, he shall thereupon vaccinate the native, endorsing, dating, and signing the pass in the manner above provided.

4. Every employer in a labour district who retains a medical practitioner to attend persons in his employ may, when requested thereto by the pass officer, cause all natives in his employ to be medically examined by such medical practitioner, and to have vaccinated those natives in his employ who have not been so vaccinated, in such manner that they are likely to be immune from smallpox for a period of two years. The medical practitioner carrying out such examination and vaccination shall endorse (in the manner provided in the last preceding regulation) the passport of every native so examined.

5. Every employer who does not so retain a medical practitioner, and every employer who fails to cause the native in his employ to be examined and vaccinated as in the preceding regulation provided, shall, when so required by the pass officer cause his natives to appear at an appointed vaccination station at a stated time or times for the purpose of examination, and vaccination if necessary, by the medical officer.

6. A medical officer or any registered medical practitioner thereto appointed by the Colonial Secretary may, upon the written authority of the resident magistrate, at reasonable times medically examine with a view to ascertaining their state of vaccination the natives of any employer, and may for that purpose enter upon any premises with a view to making that examination.

7. (1) Any employer who neglects or refuses to comply with the provisions of these regulations, or who prevents, hinders, or dissuades any native or other person in his employ from complying with the same, or who hinders or obstructs any medical officer or other medical practitioner from examining and vaccinating natives under the said provisions, shall be guilty of an offence, and upon conviction before a court of resident magistrate shall be liable to a fine not exceeding twenty-five pounds or to imprisonment with or without hard labour not exceeding six weeks, or to both such fine and imprisonment.

(2) Any native who neglects or refuses to present himself for medical examination and vaccination when called upon to do so under these regulations, or who refuses to submit to the medical examination and vaccination provided for in these regulations, shall be guilty of an offence, and upon conviction before a competent court shall be liable to a fine not exceeding ten pounds, or to imprisonment with or without hard labour not exceeding one month, or to both such fine and imprisonment.

ANNEXURE "A".

pass
Bearer of this permit must come to the.....
certificate

.....for medical examination at
.....o'clock in the.....on.....
the.....day of..... 19.....

Pass Officer.

Date.....

Proclamation
(Trans.) No.
25 of 1901.

PROCLAMATION No. 25 OF 1901.*

By His Excellency BARON MILNER, Administrator of the Transvaal, and His Majesty's High Commissioner for South Africa, etc.

(Dated 16th September, 1901.)

By virtue of the provisions of Clause 5 of the Order of His Majesty in Council, dated the 8th day of August, 1901, hereunto annexed, it is hereby proclaimed and made known that the said Order shall come into operation in the Transvaal on the 30th day of August, 1901.

ORDER IN COUNCIL.

At the Court at St. James's
The 8th day of August, 1901.

Present:

THE KING'S MOST EXCELLENT MAJESTY.

Lord President.

Earl of Kintore.

Lord Chamberlain.

Earl Waldegrave.

Whereas by an Order of Her late Majesty Queen Victoria in Council, dated the 17th day of November, 1888, it was provided that Part 2 of the Fugitive Offenders Act, 1881, should apply to the group of British Possessions therein mentioned;

And whereas by a further Order of Her late Majesty in Council, dated the 12th day of December, 1891, it was provided that the Fugitive Offenders Act, 1881, should apply as if the territories within the limits of Part 1 of the said Order were a British Possession, and that Part 2 of the said Act should apply to the British Possessions named in the aforesaid Order of the 17th day of November, 1888, and to the parts of South Africa mentioned in the said Order of the 12th day of December, 1891;

And whereas by an Order of Her late Majesty in Council, dated the 3rd day of October, 1895, it was provided that the Governor of the Colony of the Cape of Good Hope might declare by Proclamation that on the date named in such Proclamation the territory of British Bechuanaland should be annexed to and form part of the Colony of the Cape of Good Hope, and by Proclamation by the said Governor dated the 11th day of November, 1895, the territory of British Bechuanaland was on the 16th day of November, 1895, annexed to and became part of the said Colony;

* Previously published as No. 18, 1901, in *Gazette*, 18th September, 1901; as to Extradition Treaties, see Govt. Notices 199, 1901 (U.S.A.); 236, 1901 (Serbia); 171, 1902 (Belgium); 658, 1902 (Austria-Hungary); 881, 1904 (Indian Extradition Act, 1903); 612, 1905 (Cuba); 662, 1905 (Switzerland); 704, 1906 (Nicaragua); 390, 1907 (U.S.A.); 775, 1907 (Peru); 987, 1907 (Belgium); 990, 1907 (Norway); 1083, 1907 (Panama); 1084, 1907 (Sweden); 118, 1910 (France and Tunis). Extradition Treaties also exist with Portugal (17th October, 1892) and Germany (5th May, 1894), under which criminals are surrendered as between Portuguese and British and German and British Possessions in South Africa. A Treaty also exists with the Argentine Republic (22nd May, 1889).

And whereas by Letters Patent passed under the Great Seal of the United Kingdom, dated the 1st day of December, 1897, the Governor for the time being of the Colony of Natal was authorized by Proclamation to declare that, from and after a date in such Proclamation to be mentioned, the British Possession of Zululand should be annexed to and form part of the Colony of Natal, and such Proclamation was duly made on the 29th day of December, 1897, and the said Possession of Zululand was from and after the 30th day of December, 1897, annexed to and became part of the said Colony;

And whereas by a Proclamation, dated the 24th day of May, 1900, certain territories in South Africa theretofore known as the Orange Free State were annexed to and now form part of His Majesty's Dominions and are known as the Orange River Colony;

And whereas by a Proclamation, dated the 1st day of September, 1900, certain territories in South Africa theretofore known as the South African Republic were annexed to and now form part of His Majesty's Dominions and are known as the Transvaal;

And whereas by treaty, grant, usage, sufferance, and other lawful means, His Majesty has power and jurisdiction in the territories of South Africa known as the Bechuanaland Protectorate, Southern Rhodesia, Barotsiland, North-Western Rhodesia, North-Eastern Rhodesia, and the British Central Africa Protectorate;

And whereas by reason of the contiguity of the aforesaid Colonies and Possessions in South Africa and the said territories, and the frequent intercommunication between them, it seems expedient to His Majesty and conducive to the better administration of justice therein that Part 2 of the Fugitive Offenders Act, 1881, should apply to the said Colonies, Possessions, and territories, and that, subject to the provisions of this Order, the Fugitive Offenders Act, 1881, should apply as if the said territories respectively were British Possessions;

Now therefore, His Majesty by virtue of the powers in this behalf by the Fugitive Offenders Act, 1881, the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, is pleased by and with the advice of his Privy Council, to order, and it is hereby ordered as follows:—

1. Subject to the provisions of this Order the Fugitive Offenders Act, 1881, shall apply as if the territories named in the First Schedule of this Order were a British Possession.

2. In the Fugitive Offenders Act, 1881, as hereby applied to the territories named in Schedule 1 of this Order and in this Order with reference to the said territories, unless the context otherwise requires, the expression "Governor" means the officer for the time being exercising the functions

(a) as regards the Bechuanaland Protectorate, Southern Rhodesia, and Barotsiland, North-Western Rhodesia, *Swaziland**, of High Commissioner for South Africa;

* Word in italics added by Order in Council dated 1st June, 1907, published by Pr. (Admn.) 60, 1907.

(b) as regards the British Central Africa Protectorate and North-Eastern Rhodesia, of Commissioner and Consul-General.

3. The jurisdiction under Part 1 of the Fugitive Offenders Act, 1881, to hear a case and commit a fugitive to prison to await his return may be exercised in the territories named in Schedule 1 of this Order by any person having in the said territories authority to issue a warrant for the apprehension of persons accused of crime and to commit such persons for trial.

4. Part 2 of the Fugitive Offenders Act, 1881, shall apply to the Colonies, Possessions, and territories mentioned in Schedules 1 and 2 of this Order.

5. The Governor of each of the Colonies, Possessions, and territories named in the Schedules to this Order shall cause this Order to be proclaimed therein and this Order shall come into operation on a day to be fixed by such Proclamation.

6. The Orders of Her late Majesty Queen Victoria in Council of the 17th day of November, 1888, and the 12th day of December, 1891, shall, as from the date of the coming into operation of this Order, be revoked, without prejudice to anything lawfully done thereunder, or to any proceedings commenced before the said date.

A. W. FITZROY.

SCHEDULE 1.

The Bechuanaland Protectorate.
 Southern Rhodesia.
 Barotsiland, North Western Rhodesia.
 British Central Africa Protectorate.
 North Eastern Rhodesia.
*Swaziland.**

SCHEDULE 2.

The Colony of the Cape of Good Hope.
 The Colony of Natal.
 Basutoland.
 The Orange River Colony.
 The Transvaal.

* Word in italics added by Order in Council dated 1st June, 1907, published by Pr. (Admn.) 60, 1907.

PROCLAMATION No. 26 OF 1901.

Proclamation
(Trans.) No.
26 of 1901.

By His Excellency **BARON MILNER**, Administrator of the Transvaal, and His Majesty's High Commissioner for South Africa, etc.

(Dated 27th September, 1901.)

WHEREAS a Proclamation was issued by the High Commissioner at Capetown, on the 19th March, 1900, notifying that the Government of Her late Majesty the Queen would not recognize as valid any alienations of property or any interest therein or any charges or incumbrances thereon affected, declared, charged, or made by the late Governments of the South African Republic or Orange Free State subsequent to the date of the said Proclamation or any concessions granted by either of the said Governments subsequent to that date;

Preamble.

And whereas it is desirable to give full force and effect to such Proclamation as Law within the Transvaal;

Now, therefore, by virtue of the authority in me vested, I do hereby declare, proclaim, and make known as follows:—

1. Any alienation of property, whether of lands, railways, mines, or mining rights, within the Transvaal, and any interest therein of whatsoever nature, and any charges or incumbrances of whatsoever description upon any such property or interest as aforesaid, effected, declared, charged, or made by the late Government of the South African Republic subsequent to the 19th March, 1900, and any concessions granted by the said Government subsequent to the said date shall be and are hereby declared to be null and void and of no effect whatsoever.

Alienations,
etc., by
Government
of late
Republic not
to be
recognised.

Proclamation
(Trans.) No.
27 of 1901.

PROCLAMATION No. 27 OF 1901.

By His Excellency BARON MILNER, Administrator of the Transvaal, and His Majesty's High Commissioner for South Africa, etc.

(Dated 9th October, 1901.)

Preamble.

WHEREAS a Proclamation by the President of the late South African Republic was issued on the 25th October, 1899, dealing with the payment of rent and interest on mortgage bonds for the period commencing from the date of the Proclamation of Martial Law until its withdrawal;

And whereas it has been made to appear to me that by the Common Law of the Transvaal lessees† of immovable property are exempted from the payment of rent in respect thereof for the period during which they have been prevented from beneficially occupying such property by reason of war or other unforeseen and unavoidable misfortunes;

Now, therefore, by virtue of the authority in me vested, I do hereby declare, proclaim, and make known as follows:—

Lessees who have had beneficial occupation to be no longer entitled to claim exemption from rent.

1. No lessee of immovable property who has the beneficial occupation thereof shall be entitled under and by virtue of the aforesaid Proclamation, dated 25th October, 1899, by the President of the late South African Republic to claim exemption from the payment of rent which shall become due in respect of such property after the date of this Proclamation.

Similarly as to mortgagees from payment of interest.

2. No person who has passed a mortgage bond, on land or other fixed property, and who has the beneficial occupation thereof shall be entitled, under and by virtue of the aforesaid Proclamation, to claim exemption from the payment of any interest which shall accrue in respect of such bond from the date of this Proclamation; or from the date when such beneficial occupation shall have commenced, if the latter date be subsequent to the former; provided always that no action shall be brought or maintained in any of the Courts in this Colony for the capital sum of such mortgage bond* until a date to be notified in the *Gazette*.

† In promulgation in *Gazette* (11th October, 1901) the word "leases" is given.

* By virtue of Pr. Tr. 32 of 1902, sec. 2, such actions may be brought, notwithstanding the above proviso, for the capital sum of any mortgage bond included in Proclamation of 25th October, 1899, after the expiration of six months reckoned from the 1st June, 1902, but not before.

PROCLAMATION No. 32 OF 1901.

Proclamation
(Trans.) No.
32 of 1901.

By HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 27th November, 1901.)

By virtue of the authority in me vested, I do hereby declare, proclaim, and make known as follows:—

1. All the jurisdictions, powers, and privileges vested by the laws of the late South African Republic in the Superintendent of Natives shall be and are hereby vested in the Commissioner for Native Affairs save where otherwise expressly provided in any Proclamation issued by the Administrator of the Transvaal.

Proclamation
(Trans.) No.
34 of 1901.

*PROCLAMATION No. 34 OF 1901.

By HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 27th November, 1901.)

DECLARING CERTAIN LAWS, VOLKSRaad RESOLUTIONS, ETC., TO
BE NO LONGER OF ANY FORCE OR EFFECT.

Preamble.

WHEREAS it is desirable that certain Laws, Volksraad Resolutions, and Government Notices published in the Statute Books of the late South African Republic, which have been impliedly repealed or become obsolete, or are unsuitable to the change in Government in the Transvaal consequent upon the annexation thereof to His Majesty's Dominions, shall be declared to be of no force or effect;

Now, therefore, by virtue of the authority in me vested, I do hereby declare, proclaim, and make known as follows:—

Repeal of
former laws
of Transvaal.

1. The Laws, Volksraad Resolutions, and Government Notices mentioned in the Schedule to this Proclamation and published in the Statute Books of the late South African Republic are hereby, to the extent mentioned in the third column to the said Schedule, declared to be of no force or effect in this Colony.

SCHEDULE.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
The Thirty-Three Articles	—	The whole	1
Volksraad Resolution	23/5/1849	4	6
“ “	19/9/1849	17	6
“ “	20/5/1850	37, 38	7
“ “	24/1/1850	41	7
“ “	5/5/1851	9	8
Apprentice Law	9/5/1851	The whole	8
Volksraad Resolution	5/5/1851	15	11
“ “	20/3/1852	41	15
“ “	15/6/1852	57, 65, 66, 67, 69, 70, 71, 72, 73, 74, 75, 76	15, 16, 17, 18, 19
Volksraad Resolution	20/11/1852	12	17
“ “	16/6/1852	38	19
“ “	20/3/1853	45, 46	20
“ “	24/3/1853	77, 85	20, 21
“ “	13/6/1853	54	21
“ “	18/6/1853	66	21

* See also Revision of Laws Ordinance (No. 40 of 1903).

† The figures refer to the articles of the law or resolution.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Volksraad Resolution	13/8/1853	56	22
" "	9/8/1853	21	22
" "	10/8/1853	33	22
" "	19/9/1853	29	23
" "	21/9/1853	115	23
" "	19/9/1853	62, 63, 64, 65, 67, 68	23, 24, 25
" "	21/11/1853	125	24
" "	23/9/1853	70	25
Instructions for Inspectors of Farms	—	The whole	26
Government Notice No. 3, 1853			
Volksraad Resolution	28/11/1853	124	28
" "	21/11/1853	143, 128, 129, 111	28, 29
" "	7/6/1854	31	29
" "	18/6/1855	145, 159	30, 31
Proclamation	29/9/1857	The whole	32
Grondwet	1858	"	35
Volksraad Resolution	13/2/1858	21	69
Ordinance	7/4/1858	The whole	75
" "	14/4/1858	"	78
Instructions for the Inspectors of Lydenburg	25/3/1858	"	79
Regulations for towns in the South African Republic ..	5/8/1858	"	85
Volksraad Resolution (Instructions for field cornets and for commandants)	17/9/1858	19	90, 100
Volksraad Resolution	20/9/1858	22	103
" "	9/1858	23 a; 23 b; 23 c; 23 d; 23 e; 32 g	104, 105, 106
Volksraad Resolution (Game Law)	22/9/1858	26	106
Volksraad Resolution (Native Trade)	22/9/1858	26	110
Volksraad Resolution	14 to 23/9/1858	28	111
Instructions for Marketmasters	25/10/1858	The whole	112
Volksraad Resolution	5/5/1859	18, 19, 20	115
Annexure I (to Grondwet) ..	19/9/1859	The whole	115
" II (to Grondwet) ..	19/9/1859	"	116
" III (to Grondwet) ..	20/9/1859	"	117
" IV (to Grondwet) ..	21/9/1859	"	123
Volksraad Resolution	21/9/1859	64	123
Government Notice (including Instructions)	7/12/1859	The whole	124
Volksraad Resolution	21/9/1859	68	125
" "	22/9/1859	75	126
Instructions for Land Commission	18/3/1860	The whole	131
Volksraad Resolution	9/4/1860	42	140
" "	23/9/1860	149	142
Proclamation	8/10/1860	The whole	142
Government Notice	8/10/1860	"	143
Instructions for Inspectors of Farms	1/2/1861	"	145

† The figures refer to the articles of the law or resolution.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Volksraad Resolution	18/2/1864	26	170
Proclamation	12/4/1864	The whole	170
Volksraad Resolution	12/5/1864	33	171
" "	12/9/1864	5, 6	174
Ordinance No. 7, 1864	6/10/1864	The whole	175
Ordinance for Registration of Wills, No. 8, 1864	6/10/1864	"	181
Ordinance No. 9, 1864	6/10/1864	"	199
Volksraad Resolution	27/9/1864	96	225
" "	27/9/1864	98	225
" "	29/9/1864	142	225
Proclamation	24/11/1864	The whole	226
Volksraad Resolution	9/3/1866	314 b	228
" "	20/3/1866	460	230
" "	24/3/1866	554	231
" "	4/4/1866	644 b	231
" "	6/4/1866	675	232
Law No. 3, 1864 (Approved 22nd March, 1866)	—	The whole	243
Volksraad Resolution (Instructions to Sheriff)	25 & 26/9/1866	200 to 238	251
Ordinance No. 3, 1866	—	—	253
Volksraad Resolution	22/10/1866	484	269
" "	26/10/1866	566	270
" "	26/10/1866	569	270
Ordinance No. 5, 1866	—	The whole	295
Proclamation	13/11/1866	"	297
Government Notice No. 70	24/6/1867	"	302
Volksraad Resolution	30/9/1867	93	303
" "	5/12/1867	240	304
Government Notice No. 143	20/1/1868	The whole	305
Volksraad Resolution	12/2/1868	253	306
" "	12/2/1868	257	307
" "	23/3/1868	465	308
" "	2/4/1868	533	308
" "	26/11/1868	316	311
" "	27/11/1868	320, 321, 323, 326	313
" "	24/5/1869	82	315
" "	28/5/1869	116	315
" "	1/6/1869	136	315
" "	2/6/1869	144	316
" "	2/6/1869	145	316
" "	4/6/1869	151	316
" "	11/6/1869	199	318
" "	14/6/1869	211	319
Volksraad Resolution (Instructions for Auditor-General)	16/6/1869	226	319
Volksraad Resolution (Pound Regulations)	18/6/1869	239	321
Law No. 3, 1869	—	The whole	326
Post Office Law (approved by Volksraad Resolution)	18/6/1869	242	329
Volksraad Resolution	19/6/1869	250	339
Orphan Chamber Law (approved by Volksraad Resolution)	19/6/1869	250	340

† The figures refer to the articles of the law or resolution.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Volksraad Resolution	19/6/1869	255	354
Government Notice No. 146..	30/10/1869	The whole	356
Law No. 1, 1870	—	"	359
" No. 4, 1870	—	"	369
" No. 5, 1870	—	"	371
" No. 6, 1870	—	"	375
" No. 7, 1870	—	"	376
" No. 8, 1870	—	"	376
" No. 9, 1870	—	"	378
Volksraad Resolution	7/6/1870	159	385
" "	8/6/1870	161	386
" "	10/6/1870	172	387
Volksraad Resolution (first portion)	13/6/1870	176	387
Volksraad Resolution (second portion)	13/6/1870	176	387
Law No. 10, 1870	—	The whole	387
Volksraad Resolution	14/6/1870	181	391
" "	15/6/1870	184	392
" "	18/6/1870	186	392
Law No. 11, 1870	—	The whole	392
Volksraad Resolution	21/6/1870	199	395
Law No. 13, 1870	—	The whole	409
Law No. 14, 1870 .. ..	..	"	412
Volksraad Resolution	4/9/1871	4	417
Government Notice No. 732..	11/9/1871	The whole	418
Volksraad Resolution	20/9/1871	75	421
" "	3/10/1871	144	422
" "	12/10/1871	151	422
Law No. 1, 1871	—	The whole	423
Volksraad Resolution	6/11/1871	280	427
" "	8/11/1871	304	427
" "	14/11/1871	346	448
" "	15/11/1871	351	449
" "	21/11/1871	357	449
Law No. 3, 1871	—	9	444
" No. 4, 1871	—	The whole	450
Volksraad Resolution	28/11/1871	377	452
" "	29/11/1871	399	452
" "	30/11/1871	416	452
" "	2/12/1871	426	453
" "	2/12/1871	431	454
Law No. 5, 1871	—	The whole	455
" No. 6, 1871	—	"	457
" No. 7, 1871	—	"	459
Volksraad Resolution	12/2/1872	485	460
" "	16, 17, and 19/2/1872	523	460
" "	20/2/1872	535	460
" "	21/2/1872	541	460
Law No. 1, 1872	—	The whole	461
Volksraad Resolution	27/2/1872	570	462
Government Notice No. 847, including Volksraad Resolu- tion	10/4/1872 } 27/11/1871 }	The whole	463
Volksraad Resolution	11 & 12/7/1872	80	463
" "	24/7/1872	131	464

† The figures refer to the articles of the law or resolution

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Volksraad Resolution	25/7/1872	136	465
Law No. 2, 1872	—	The whole	465
Volksraad Resolution	29/7/1872	156	469
Government Notice No. 933, including Treaty	8/8/1872 †	The whole	469
Volksraad Resolution	29/7/1872	157	472
" "	30 & 31/7/1872	161	472
" "	2/8/1872	174	472
Law No. 3, 1872	—	The whole	473
Volksraad Resolution	8/3/1873	28	475
" "	11/3/1873	39	475
Law No. 1, 1873	—	The whole	476
" No. 2, 1873	—	"	478
" No. 3, 1873	—	"	479
" No. 4, 1873	—	"	480
" No. 5, 1873	—	"	482
Volksraad Resolution	24/5/1873	23	515
" "	26/5/1873	25	515
" "	26/5/1873	26	516
" "	29/5/1873	41	516
Law No. 6, 1873	—	The whole	517
Volksraad Resolution	30/5/1873	54	519
" "	30 & 31/5/1873	55	519
" "	31/5/1873	59	519
" "	5/6/1873	105	519
" "	7/6/1873	111	520
" "	7/6/1873	112	520
" "	7/6/1873	113	520
" "	9/6/1873	123	521
" "	10/6/1873	133	522
" "	10/6/1873	135	522
" "	10/6/1873	137	522
" "	10/6/1873	142	523
" " with report	11/6/1873	146	523
" "	11/6/1873	153, 154, 155, 156, 157, 158, 159	525
" "	14/6/1873	170	526
Law No. 7, 1873	—	The whole	527
Volksraad Resolution	19/5/1873	"	537
" "	20/5/1873	2	537
Government Notice No. 1419..	6/1/1874	The whole	538
Law No. 1, 1874*	—	"	541
" No. 4, 1874	—	"	566
" No. 7, 1874	—	"	591
Volksraad Resolution	22/9/1874	2	594
" "	23 & 24/9/1874	10	594
" "	28 & 29/9/1874	27	595
" "	30/9/1874	32	595
" "	9/10/1874	94	596
" "	12/10/1874	112	596
" "	16/10/1874	132	596
" "	19 & 20/10/1874	138	597
" "	21 & 22/10/1874	149	597
" "	23/10/1874	154	597
" "	23 & 24/10/1874	157	598

† The figures refer to the articles of the law or resolution.

* Law 1, 1874, was inserted by a clerical error; see Govt. Notice No. 301, 1901 (*Gazette*, 6th December, 1901).

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Volksraad Resolution	29/10/1874	178	598
" "	31/10/1874	185	598
" "	2/11/1874	191	599
Government Notice No. 1644..	2/11/1874	The whole	599
Volksraad Resolution	3/11/1874	195	600
Notice of Surveyor-General ..	4/11/1874	The whole	600
Volksraad Resolution	4/11/1874	206	602
" "	13/11/1874	244	602
" "	16/11/1874	252	603
" "	18/11/1874	271	604
" "	18/11/1874	274*	604
Government Notice No. 1689..	8/12/1874	The whole	605
Proclamation No. 1705	14/12/1874	"	605
Government Notice No. 1874	22/3/1875	"	607
Volksraad Resolution	8 & 10/5/1875	30, 31	607
Government Notice No. 1925..	11/5/1875	The whole	607
Volksraad Resolution	11/5/1875	44	608
" "	12/5/1875	56	608
" "	13/5/1875	79	608
" "	21/5/1875	103, 110, 111	609
" "	24/5/1875	118	611
" "	26/5/1875	146	611
" "	26/5/1875	147	612
" "	27/5/1875	150	612
" "	27/5/1875	151	612
Law No. 2, 1875	—	The whole	615
" No. 3, 1875	—	"	616
" No. 4, 1875	—	"	617
Volksraad Resolution	2/6/1875	183	621
Law No. 5, 1875	—	The whole	621
Volksraad Resolution	3/6/1875	188	622
Law No. 6, 1875	—	The whole	622
Government Notice No. 1983..	3/8/1875	"	632
" " No. 1998 (with appendix)	16/8/1875	"	633
Government Notice No. 2080..	12/10/1875	"	634
" " No. 2082..	12/10/1875	"	635
" " No. 2092..	18/10/1875	"	636
" " No. 2161..	26/11/1875	"	637
" " No. 14	14/1/1876	"	638
" " No. 13	14/1/1876	"	638
" " No. 36	15/2/1876	"	640
" " No. 42	15/2/1876	"	640
" " No. 75	15/3/1876	"	640
Volksraad Resolution	5/5/1876	29, 30	642
" "	9 & 10/5/1876	43, 44	642
Regulations for examination of teachers	15/5/1876	The whole	643
Volksraad Resolution	15/5/1876	52	644
" "	27/5/1876	89	645
Law No. 1, 1876	—	The whole	645
" No. 2, 1876	—	"	649
Volksraad Resolution	3/6/1876	101	658
" "	7/6/1876	108	659
" "	7/6/1876	109	660
" "	7/6/1876	111	660
" "	7/6/1876	112	660

† The figures refer to the articles of the law or resolution.

* Erroneously published in Proc. 1900-1902 as Art. 278; see *Gazette*, 29th November, 1901.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Volksraad Resolution	7/6/1876	113	661
" "	7/6/1876	114	661
" "	7/6/1876	115	661
" "	7/6/1876	116	661
" "	7/6/1876	119	661
" "	8/6/1876	135	662
Law No. 3, 1876	—	The whole	662
Volksraad Resolution	12/6/1876	201	668
" "	14/6/1876	216, 219	669
" "	14/6/1876	220	669
" "	14/6/1876	222	669
" "	16/6/1876	235†	670
" "	6/9/1876	7	670
" "	11 & 12/9/1876	17	670
Law No. 4, 1876	—	The whole	671
" No. 5, 1876	—	"	673
Volksraad Resolution	22/9/1876	37	675
" "	26/9/1876	45	676
" "	27/9/1876	48	676
Government Notice No. 342 ..	24/10/1876	The whole	677
" " No. 517	6/1/1877	"	677
" " No. 532	20/2/1877	"	678
Volksraad Resolution	1/3/1877	18	678
" "	2/3/1877	24	679
Government Notice No. 569 ..	15/3/1877	The whole	679
Law No. 1, 1877	—	"	684
Volksraad Resolution	8/3/1877	39	685
Government Notice No. 572 ..	16/3/1877	The whole	685
Proclamation	5/4/1877	"	686
Government Notice No. 10 ..	20/4/1877	"	700
Government Notice No. 26 and annexure	4/5/1877	"	702
Proclamation	18/5/1877	"	703
" "	1/6/1877	"	708
Government Notice No. 51 ..	8/6/1877	"	709
" " No. 122	26/10/1877	"	712
" " No. 30	2/3/1878	"	712
" " No. 69	2/6/1879	"	717
" " No. 75	4/6/1879	"	718
" " No. 77	7/6/1879	"	719
" "	19/7/1879	"	719
" " No. 110	26/7/1879	"	720
" " No. 40 (with Convention)	11/2/1880	"	736
Proclamation dated 9th March, 1880 (re High Court, and annexure)	—	"	741
Law No. 1, 1880	—	"	744
" No. 2, 1880	—	"	744
" No. 8, 1880	—	"	755
" No. 10, 1880	—	"	764
Proclamation	28/8/1880	"	766
Law No. 11, 1880	—	"	773
" No. 12, 1880	—	"	785
Government Notice No. 151 (with Regulations)	29/6/1880	"	839
Law No. 17, 1880	—	"	856

† The figures refer to the articles of the law or resolution.

‡ Erroneously published in Proc. 1900-1902 as Art. 232; see *Gazette*.

Law, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Law No. 21, 1880	—	The whole	864
Government Notice No. 175 ..	13/8/1880	„	939
„ „ No. 189 ..	1/9/1880	„	941
„ „ No. 223 ..	12/10/1880	„	944
Law No. 1, 1881	—	„	953
„ No. 2, 1881	—	„	981
„ No. 4, 1881	—	„	984
Proclamation	9/8/1881	„	1011
Government Notice No. 24 ..	15/8/1881*	„	1014
Volksraad Resolution	18/8/1881	127	1015
„ „	25/10/1881	193	1021
Law No. 2, 1881	—	The whole	1021
„ No. 3, 1881	—	„	1025
„ No. 4, 1881	—	„	1029
Volksraad Resolution	1/11/1881	226	1036
„ „	1/11/1881	282	1036
„ „	2/11/1881	288	1036
„ „	5/11/1881	347‡	1037
Government Notice No. 76, (with Regulations)	5/11/1881	The whole	1037
Law No. 5, 1881	—	„	1038
Volksraad Resolution	7/11/1881	352	1043
„ „	7/11/1881	354	1043
„ „	7/11/1881	355	1044
„ „	8/11/1881	363	1045
„ „	8/11/1881	372	1046
Government Notice No. 131 (with annexure)	27/1/1882	The whole	1047
Government Notice No. 160 ..	27/2/1882	„	1065
„ „ No. 162 ..	27/2/1882	„	1065
Government Notice No. 217 (with annexure)	11/4/1882	„	1068
Law No. 1, 1882	—	„	1069
Government Notice No. 252 (with annexure)	12/5/1882	The whole	1076
Law No. 3, 1882	—	„	1096
„ No. 4, 1882	—	„	1099
Volksraad Resolution	31/5/1882	248	1105
„ „	31/5/1882	253	1105
„ „	1/6/1882	258	1105
„ „	2/6/1882	261	1105
„ „	3/6/1882	271 and 272	1106
„ „	8/6/1882	317	1107
„ „	9/6/1882	323	1108
„ „	21/6/1882	538	1108
„ „	26/6/1882	580	1109
„ „	27/6/1882	583	1110
„ „	27/6/1882	594	1111
„ „	27/6/1882	595	1111
„ „	27/6/1882	596	1111
„ „	3/7/1882	685, 686	1113
Law No. 6, 1882	—	The whole	1118
Volksraad Resolution	7 & 8/7/1882	743 & 744 (except so much as relates to taxes on farms)	1125

† The figures refer to the articles of the law or resolution.

* Erroneously published in Proc. 1900-1902, as dated 15th March, 1901; see *Gazette*.‡ Erroneously published in Proc. 1900-1902 as Art. 237; see *Gazette*.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Volksraad Resolution	7 & 8/7/1882	754, 755	1129
" " " "	8/7/1882	757	1130
Law No. 7, 1882	—	The whole	1131
" No. 8, 1882	—	"	1135
Government Notice	11/9/1882	"	1140
" " " " No. 411	5/10/1882	"	1141
Proclamation	27/1/1883	"	1147
Volksraad Resolution	18/5/1883	88, 89	1150
" " " "	21 & 22/5/1883	110, 113, & 114	1150
" " " "	7/6/1883	257 & 258	1151
" " " "	11/6/1883	268, 269	1152
" " " "	12/6/1883	278	1153
" " " "	15/6/1883	344	1153
Law No. 1, 1883	—	The whole	1156
" No. 2, 1883	—	"	1164
" No. 3, 1883	—	"	1178
" No. 5, 1883	—	"	1185
" No. 6, 1883	—	"	1189
" No. 7, 1883	—	"	1192
" No. 8, 1883	—	"	1200
" No. 9, 1883	—	"	1209
Volksraad Resolution	28/6/1883	480	1215
" " " "	30/6/1883	505	1215
" " " "	3/7/1883	538	1215
" " " "	4/7/1883	570	1216
" " " "	9/7/1883	620, 621	1216
" " " "	12/7/1883	713	1217
" " " "	13/7/1883	752	1217
" " " "	19/7/1883	849	1218
" " " "	23/7/1883	877, 879	1219
Proclamation	24/7/1883	The whole	1220
Volksraad Resolution	20/7/1883	855	1221
" " " "	24/7/1883	885	1223
" " " "	24/7/1883	892	1223
" " " "	24/7/1883	900, 901	1223, 1224
" " " "	25/7/1883	902, 906	1224, 1225
" " " "	25/7/1883	909, 911	1225, 1226
" " " "	26/7/1883	917, 918, 919, 920	1226
" " " "	27/7/1883	943	1227*
Volksraad Resolution	30/7/1883	967, 969, 970, 971	1227, 1228
" " " "	31/7/1883	982	1228
" " " "	31/7/1883	985	1229
Government Notice No. 210 ..	27/9/1883	The whole	1232
" " " " No. 214	1/10/1883	"	1233
" " " " No. 212	29/9/1883	"	1234
" " " " No. 239	14/11/1883	"	1234
Proclamation	6/3/1884	"	1236
Government Notice No. 113 ..	17/4/1884	"	1240
" " " " No. 127	29/4/1884	"	1241
Proclamation	19/5/1884	"	1244
" " " "	17/6/1884	"	1246
Volksraad Resolution	30/7/1884	1017	1248
" " " "	31/7/1884	1030	1249
" " " "	13/8/1884	85	1259
" " " "	18/8/1884	155	1261

† The figures refer to the articles of the law or resolution.

* Erroneously published in Proc. 1900-1902 as page 2271; see *Gazette*.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Volksraad Resolution	28/8/1884	278, 287	1262
" "	29/8/1884	315	1262
" "	1/9/1884	340	1263
" "	4/9/1884	373	1263
" "	6/9/1884	418	1264
" "	8/9/1884	419, 427	1264
" "	9/9/1884	431	1265
" "	17/9/1884	490	1265
" "	24/9/1884	574	1267
" "	3/10/1884	733, 749	1268
" "	13/10/1884	857	1268
Government Notice No. 292 (with annexures)	20/10/1884	The whole	1269
Volksraad Resolution	18/10/1884	951, 952, 953, 954, 958	1273
" "	22/10/1884	979, 981, 982, 983, 984, 985, 988	1274
Appendix to Law No. 1, 1883	—	—	1276
Volksraad Resolution	27/10/1884	1055, 1056	1280
" "	28/10/1884	1066	1280
Law No. 2, 1884	—	The whole	1281
Volksraad Resolution	3/11/1884	1161, 1162, 1165, 1166	1298
Government Notice No. 322 ..	10/11/1884	The whole	1300
Volksraad Resolution	10/11/1884	1273, 1288	1300
Government Notice No. 330 ..	17/11/1884	The whole	1303
Proclamation	25/11/1884	"	1304
Government Notice No. 346 (with annexure)	25/11/1884	"	1305
Proclamation	27/11/1884	"	1307
Government Notice No. 357 ..	2/12/1884	"	1308
" " No. 366	12/12/1884	"	1309
" " No. 368	17/12/1884	"	1310
Government Notice No. 369 (with annexure)	22/12/1884	"	1311
Government Notice No. 375 (with annexure)	22/12/1884	"	1313
Government Notice No. 55 ..	9/3/1885	"	1317
" " No. 55	17/3/1885	"	1317
" " No. 55	1/4/1885	"	1319
" " No. 55	2/4/1885	"	1320
Volksraad Resolution	15/5/1885	117	1322
" "	21/5/1885	184	1325
" "	22/5/1885	195	1327
" "	27/5/1885	218	1327
" "	29/5/1885	247, 248	1327, 1328
" "	2/6/1885	264	1331
" "	2/6/1885	272	1331
" "	6/6/1885	309	1338
" "	9/6/1885	331	1338
" "	10/6/1885	360	1338
" "	11/6/1885	375	1340
" "	11/6/1885	377, 378, 379, 380	1340
" "	13/6/1885	400, 401	1341, 1342
" "	15/6/1885	405	1342

† The figures refer to the articles of the law or resolution.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Volksraad Resolution	15/6/1885	407	1342
Government Notice No. 123 (with annexure)	16/6/1885	The whole	1342
Volksraad Resolution	18/6/1885	470, 471, 472, 474	1343
" "	18 & 19/6/1885	475, 481	1344
" "	25/6/1885	450	1345
" "	26/6/1885	565	1346
Government Notice No. 134 (with annexure)	29/6/1885	The whole	1346
Law No. 5, 1885	—	"	1356
Volksraad Resolution	6/7/1885	644, 651	1364, 1365
" "	7/7/1885	715	1365
" "	8/7/1885	735	1365
" "	9/7/1885	757, 769	1365, 1366
" "	10/7/1885	776	1366
" "	13/7/1885	823	1366
" "	13/7/1885	825	1367
" "	22/7/1885	949	1367
" "	22/7/1885	951	1367
Proclamation	22/7/1885	The whole	1368
Volksraad Resolution	23/7/1885	977	1368
" "	25/7/1885	989	1369
" "	25/7/1885	990, 991	1369, 1370
" "	29/7/1885	1066	1370
" "	31/7/1885	1104	1373
Law No. 7, 1885	—	The whole	1373
Volksraad Resolution	1/8/1885	112	1377
Law No. 8, 1885	—	The whole	1377
Volksraad Resolution	30/7/1885	1074	1400
" "	3/8/1885	1120	1400
" "	4/8/1885	1136	1401
" "	5/8/1885	1192, 1193	1402
" "	6/8/1885	1199	1402
Law No. 9, 1885	—	The whole	1404
" No. 10, 1885	—	"	1407
Notice <i>re</i> Telegraphs	20/8/1885	"	1411
Government Notice No. 172 ..	20/8/1885	"	1411
" " No. 173	20/8/1885	"	1412
" " No. 207	13/10/1885	"	1413
Notice (Postal)	24/10/1885	"	1417
Government Notice No. 256 ..	15/12/1885	"	1420
Notice	30/12/1885	"	1421
Law No. 1, 1886	—	"	1
" No. 2, 1886	—	"	22
Appendix No. 4, 1886	—	"	23
Law No. 6, 1886	—	"	27
" No. 7, 1886	—	"	28
" No. 9, 1886	—	"	33
" No. 10, 1886	—	"	35
" No. 11, 1886	—	"	41
" No. 13, 1886	—	"	54
Law No. 14, 1886	—	"	56
Appendix to Law No. 8, 1885 ..	—	"	65
Amendment of Law No. 8, 1885 ..	—	"	66
Volksraad Resolution	17/5/1886	218	72
" "	19/5/1886	224	73

† The figures refer to the articles of the law or resolution.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Volksraad Resolution	19/5/1886	226	73
" " " "	27/5/1886	352	75
" " " "	28/5/1886	373	75
" " " "	31/5/1886	384	76
" " " "	1/6/1886	394	76
" " " "	2/6/1886	405	77
" " " "	3/6/1886	411, 413	77
" " " "	4/6/1886	423	77
" " " "	8/6/1886	459	78
" " " "	22/6/1886	615	79
" " " "	28/6/1886	723	79
" " " "	29/6/1886	730	79
" " " "	1/7/1886	800	80
" " " "	7/7/1886	877	81
" " " "	9/7/1886	888	81
" " " "	10/7/1886	919	81
" " " "	29/7/1886	1226	82
" " " "	29/7/1886	1228	83
" " " "	29/7/1886	1231	83
" " " "	30/7/1886	1240	83
" " " "	2/8/1886	1269	84
" " " "	2/8/1886	1277	84
" " " "	4/8/1886	1294	84
" " " "	4/8/1886	1304	84
" " " "	5/8/1886	1316	85
" " " "	5/8/1886	1318	85
" " " "	9/8/1886	1344	86
" " " "	9/8/1886	1355	86
" " " "	9/8/1886	1356	86
" " " "	10/8/1886	1391, 1392	86, 87
" " " "	11/8/1886	1410, 1411	87
" " " "	12/8/1886	1415	88
" " " "	12/8/1886	1423	89
" " " "	12/8/1886	1424	89
Law No. 1, 1887	—	The whole	90
" No. 4, 1887	—	"	99
" No. 5, 1887	—	"	108
" No. 6, 1887	—	"	111
" No. 8, 1887	—	"	130
" No. 9, 1887	—	"	132
" No. 10, 1887	—	"	137
" No. 11, 1887	—	"	151
" No. 12, 1887	—	"	153
" No. 13, 1887	—	"	154
" No. 14, 1887	—	"	159
" No. 15, 1887	—	"	162
" No. 16, 1887	—	"	164
" No. 18, 1887	—	"	171
Standing Orders of the Volks- raad	—	"	172
Volksraad Resolution	3/5/1887	26	187
" " " "	5/5/1887	37, 44	189
" " " "	7/5/1887	47	190
" " " "	9/5/1887	57	191
" " " "	10/5/1887	64, 66, 68, 70	192, 193, 194
" " " "	20/5/1887	260	194
" " " "	24/5/1887	288, 291	194, 195

† The figures refer to the articles of the law or resolution.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Volksraad Resolution	31/6/1887	393	195
.. .. .	9/6/1887	516	195
.. .. .	11/6/1887	525	196
.. .. .	16/6/1887	564	197
.. .. .	20/6/1887	618	199
.. .. .	21/6/1887	644, 646	200
.. .. .	24/6/1887	688, 691	200
.. .. .	27/6/1887	708	201
.. .. .	13/7/1887	1077	201
.. .. .	21/7/1887	1203	203
.. .. .	27/7/1887	1302, 1305	203
.. .. .	29/7/1887	1344	204
.. .. .	30/7/1887	1366	205
Law No. 1, 1888	—	The whole	1
.. No. 2, 1888	—	..	3
.. No. 4, 1888	—	..	6
.. No. 6, 1888	—	..	10
.. No. 8, 1888	—	4	15
.. No. 9, 1888	—	The whole	20
.. No. 10, 1888	—	..	33
.. No. 11, 1888	—	..	34
Volksraad Resolution	7/5/1888	18	37
.. .. .	9/5/1888	43	38
.. .. .	11/5/1888	63	39
.. .. .	11/5/1888	65	40
.. .. .	12/5/1888	74	41
.. .. .	14/5/1888	78	42
.. .. .	14/5/1888	90, 92	43
.. .. .	15/5/1888	94	44
.. .. .	16/5/1888	111	45
.. .. .	17/5/1888	114	46
.. .. .	22/5/1888	158, 160	46, 47
.. .. .	25/5/1888	241	48
.. .. .	30/5/1888	322, 323	49
.. .. .	1/6/1888	335	49
.. .. .	4/6/1888	359	49
.. .. .	6/6/1888	387	50
.. .. .	14/6/1888	454	52
.. .. .	21/6/1888	538	53
.. .. .	6 & 7/7/1888	928	65
.. .. .	9/7/1888	931	66
.. .. .	11/7/1888	972	66
.. .. .	13/7/1888	1010	67
.. .. .	20/7/1888	1073	67
.. .. .	23/7/1888	1081	69
.. .. .	23/7/1888	1085	69
.. .. .	23/7/1888	1088	70
.. .. .	24/7/1888	1092	71
Proclamation	26/4/1888	The whole	76
.. .. .	23/7/1888	..	78
Law No. 1, 1889	—	..	82
.. No. 2, 1889	—	..	83
.. No. 3, 1889	—	..	88
.. No. 4, 1889	—	..	89
.. No. 5, 1889*	—	..	90

† The figures refer to the articles of the law or resolution.

* Law 5, 1889, was, through clerical error, omitted in *Gazette*; see Govt. Notice No. 30, 1901 (*Gazette*, 6th December, 1901).

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Law No. 8, 1889	—	The whole	98
Volksraad Resolution	7/5/1889	27	139
.. ..	7/5/1889	30	139
.. ..	8/5/1889	40	140
.. ..	8/5/1889	49	141
.. ..	10/5/1889	66, 67	142
.. ..	10/5/1889	69	143
.. ..	10/5/1889	71	143
.. ..	18/5/1889	179, 181	147, 148
.. ..	21/5/1889	211	150
.. ..	27/5/1889	253	150
.. ..	27/5/1889	256	151
.. ..	28/5/1889	281	151
.. ..	29/5/1889	292	152
.. ..	7/6/1889	379	152
.. ..	12/6/1889	404	153
.. ..	13/6/1889	410	153
.. ..	17/6/1889	443	155
.. ..	20/6/1889	473, 474, 475	156
.. ..	22/6/1889	496	157
.. ..	27/6/1889	546	158
.. ..	28/6/1889	584	159
.. ..	15/7/1889	965	159
.. ..	15/7/1889	982	159
.. ..	17/7/1889	1037	159
.. ..	18/7/1889	1040	160
.. ..	18/7/1889	1042	160
.. ..	18/7/1889	1044	161
Proclamation	5/1/1889	The whole	162
.. ..	16/4/1889	..	163
.. ..	23/8/1889	..	167
Grondwet, 1889	—	..	173
Law No. 1, 1890	—	..	1
.. No. 3, 1890	—	..	9
.. No. 4, 1890	—	..	22
.. No. 5, 1890	—	..	27
.. No. 6, 1890	—	..	29
.. No. 8, 1890	—	..	34
Volksraad Resolution	7/5/1890	33, 36	41
.. ..	8/5/1890	47	42
Executive Council Resolution (confirmed by Volksraad Resolution, 10th May, 1890, Article 58)	8/4/1890	699, 271	45
Volksraad Resolution	10/5/1890	64	47
.. ..	10/5/1890	73	49
.. ..	12/5/1890	77	49
.. ..	13/5/1890	90	50
.. ..	13/5/1890	109	52
.. ..	20/5/1890	149	53
.. ..	24/5/1890	179	55
.. ..	27/5/1890	182 & 188	56
.. ..	4/6/1890	249	57
.. ..	7/6/1890	316	57
.. ..	10/6/1890	333	58
.. ..	19/6/1890	434	59
.. ..	19/6/1890	436, 438	59

† The figures refer to the articles of the law or resolution.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Volksraad Resolution	1/7/1890	543	60
” ”	4/7/1890	592	60
” ”	23/7/1890	1034	61
” ”	23/7/1890	1044	61
” ”	29/7/1890	1159	62
” ”	1/8/1890	1164	62
” ”	2/8/1890	1168	62
” ”	11/8/1890	1235, 1236	79
Proclamation	17/2/1890	The whole	87
”	29/4/1890	”	92
”	12/5/1890	”	95
”	20/6/1890	”	96
”	26/8/1890	”	98, 99
”	6/9/1890	”	101
”	30/9/1890	”	102
”	30/9/1890	”	103
”	30/9/1890	”	104
”	30/9/1890	”	105
Law No. 6, 1891	—	”	148
” No. 7, 1891	—	”	151
” No. 8, 1891	—	”	154
” No. 10, 1891	—	”	182
” No. 11, 1891	—	”	230
” No. 12, 1891	—	”	231
” No. 13, 1891	—	”	242
First Volksraad Resolution ..	8/5/1891	39	251
” ”	20/5/1891	71	253
” ”	20/5/1891	78	254
” ”	20/5/1891	82	254
Executive Council Resolution (confirmed by First Volksraad Resolution of 21st May, 1891, Article 96)	25/9/1890	625, 620, 175*	256, 259
First Volksraad Resolution ..	23/5/1891	107	260
” ”	27/5/1891	154, 155, 156, 157, 158, 160, 161, 162, 164, 166, 167, 170	262 to 266
” ”	28/5/1891	175	266
” ”	5/6/1891	300	267
” ”	9/6/1891	342	280
” ”	24/6/1891	516	284
” ”	30/6/1891	634	284
” ”	14/7/1891	889	285
” ”	31/7/1891	1196	287
” ”	31/7/1891	1197	288
” ”	3/8/1891	1232, 1234	292
” ”	4/8/1891	1265	292
” ”	4/8/1891	1267	293
” ”	4/8/1891	1271, 1273	294
” ”	6/8/1891	1291, 1320, 1321	295, 296
” ”	7/8/1891	1327	297
Second Volksraad Resolution	8/6/1891	433	298
Amendment of Law No. 2, 1889	—	The whole	374
Government Notice No. 338 (with Regulations)	14/9/1891	”	390

† The figures refer to the articles of the law or resolution.

* Erroneously published in Proc. 1900-1902 as Art. 675; see *Gazette*.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Government Notice No. 387 (with Regulations)	14/11/1891	The whole	394
Government Notice No. 399 ..	1/12/1891	"	402
" " No. 415 ..	31/11/1891	"	403
" " No. 418 ..	22/12/1891	"	404
" " No. 423 ..	29/12/1891	"	409
Law No. 2, 1892	—	"	412
" No. 12, 1892	—	"	466
" No. 13, 1892	—	"	471
" No. 15, 1892	—	"	495
" No. 17, 1892	—	"	501
" No. 18, 1892	—	"	502
" No. 19, 1892	—	"	555
" No. 20, 1892	—	"	562
" No. 22, 1892	—	"	580
" No. 23, 1892	—	"	584
First Volksraad Resolution ..	3/5/1892	20	587
" " ..	6/5/1892	55	588
" " ..	6/5/1892	58	588
Executive Council Resolution (approved by First Volks- raad Resolution, Article 85, 10th May, 1892)	16/1/1892	35	589
First Volksraad Resolution ..	17/5/1892	188	601
" " ..	19/5/1892	213	602
" " ..	30/5/1892	315	603
" " ..	2/6/1892	356	605
" " ..	8/7/1892	691	615
" " ..	12/7/1892	738	615
" " ..	18/7/1892	825	616
" " ..	22/7/1892	885	617
" " ..	22/7/1892	886	617
" " ..	2/8/1892	1024	621
" " ..	6/8/1892	1077	622
" " ..	11/8/1892	1102	623
" " ..	11/8/1892	1114	625
" " ..	19/8/1892	1244	626
" " ..	26/8/1892	1292	630
" " ..	29/8/1892	1311	631
" " ..	29/8/1892	1317	632
Proclamation	16/5/1892	The whole	660
Government Notice No. 9 ..	12/1/1892	"	688
" " No. 119 ..	26/4/1892	"	698
" " No. 323 ..	6/9/1892	"	710
" " No. 418 ..	1/12/1892	"	726
Law No. 3, 1893	—	"	743
" No. 5, 1893	—	"	770
" No. 7, 1893	—	"	776
" No. 10, 1893	—	"	796
" No. 11, 1893	—	"	800
" No. 12, 1893	—	"	802
" No. 13, 1893	—	"	805
" No. 14, 1893	—	"	806
First Volksraad Resolution ..	9/5/1893	68	813
" " ..	17/6/1893	370	819
" " ..	19/6/1893	376	819
" " ..	21/6/1883	412	820

† The figures refer to the articles of the law or resolution.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
First Volksraad Resolution ..	27/6/1893	474	822
.. ..	1/8/1893	956	834
.. ..	5/8/1893	997, 998, 999,	836
.. ..		1000	
.. ..	7/8/1893	1021	837
.. ..	14/8/1893	1078	839
.. ..	15/8/1893	1098	839
.. ..	16/8/1893	1106	841
.. ..	18/8/1893	1123	842
.. ..	21/8/1893	1136	843
.. ..	31/8/1893	1257	864
.. ..	8/9/1893	1341	871
.. ..	9/9/1893	1356	872
.. ..	9/5/1893	The whole	885
Proclamation			
Government Notice No. 154 (with Regulations) ..	11/7/1893	..	956
Government Notice No. 413 ..	28/11/1893	..	1014
Law No. 3, 1894	—	..	15
.. No. 14, 1894	—	..	113
.. No. 15, 1894	—	..	167
.. No. 16, 1894	—	..	208
.. No. 17, 1894	—	..	210
.. No. 18, 1894	—	..	212
.. No. 19, 1894	—	..	216
.. No. 20, 1894	—	..	224
.. No. 21, 1894	—	..	239
First Volksraad Resolution ..	8/5/1894	16	246
.. ..	28/5/1894	237	249
.. ..	22/6/1894	641, 651	265
.. ..	30/6/1894	659	266
.. ..	11/7/1894	787	267
.. ..	11/7/1894	789	268
.. ..	17/7/1894	872	269
.. ..	20/7/1894	922	272
.. ..	21/7/1894	938	292
.. ..	25/7/1894	997	292
.. ..	22/8/1894	1428	306
.. ..	23/8/1894	1454	307
.. ..	24/8/1894	1475	308
.. ..	24/8/1894	1480	309
.. ..	27/8/1894	1510	311
.. ..	10/9/1894	1636	327
.. ..	12/9/1894	1683*	327
.. ..	20/9/1894	1778	331
.. ..	20/9/1894	1789	332
.. ..	21/9/1894	1798	332
.. ..	19/5/1894	The whole	350
Proclamation			
Government Notice No. 36 ..	9/2/1894	..	366
Law No. 2, 1895	—	..	7
.. No. 5, 1895	—	..	15
.. No. 17, 1895	—	..	139
.. No. 18, 1895	—	..	143
.. No. 19, 1895	—	..	164
.. No. 23, 1895	—	..	232
First Volksraad Resolution ..	7/5/1895	22	257
.. ..	20/5/1895	128	260
.. ..	28/5/1895	200	260

† The figures refer to the articles of the law or resolution.

* Erroneously published in Proc. 1900-1902 as Art 1633; see Gazette.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
First Volksraad Resolution ..	28/5/1895	205	261
" " ..	7/6/1895	302	262
" " ..	21/6/1895	435	268
" " ..	22/6/1895	440	268
" " ..	24/6/1895	451	269
" " ..	1/7/1895	539	271
" " ..	1/7/1895	541	272
" " ..	25/7/1895	725	280
" " ..		729	282
" " ..	31/7/1895	788	283
" " ..	14/8/1895	916	286
" " ..	23/8/1895	988	290
" " ..	28/8/1895	1023	291
" " ..	2/9/1895	1072	294
" " ..	2/9/1895	1074	294
" " ..	20/9/1895	1282	296
" " ..	23/9/1895	1290	297
" " ..	2/10/1895	1417	298
" " ..	7/10/1895	1548	302
" " ..	25/5/1895	203	306
Second Volksraad Resolution			
Proclamation	29/5/1895	The whole	334
Law No. 1, 1896	—	"	1
" No. 2, 1896	—	"	35
" No. 3, 1896	—	"	60
" No. 4, 1896	—	"	74
" No. 9, 1896	—	"	83
" No. 10, 1896	—	"	84
" No. 12, 1896	—	"	90
" No. 13, 1896	—	"	142
" No. 17, 1896	—	"	159
" No. 21, 1896	—	"	183
" No. 24, 1896	—	"	240
" No. 25, 1896	—	"	242
" No. 30, 1896	—	"	278
" No. 31, 1896	—	"	280
Johannesburg Town Council			
Law	—	The whole	294
Regulations for towns in S.A.R.	—	"	303
Standing Orders for Volksraad	—	"	309
First Volksraad Resolution ..	8/5/1896	70	326
" " ..	8/5/1896	69	327
" " ..	11/5/1896	105	327
" " ..	2/6/1896	446	328
" " ..	27 & 29/6/1896	732, 733, 735, 736, 739, 741	329
" " ..	22/7/1896	981	332
" " ..	23/7/1896	998	335
" " ..	17/8/1896	1205	337
" " ..	19/8/1896	1235	338
" " ..	4/9/1896	1358	342
" " ..	24/9/1896	1783	342
" " ..	29/9/1896	1834	342
" " ..	30/9/1896	1857	344
" " ..	30/9/1896	1858	345
" " ..	2/11/1896	1864	347
" " ..	30/11/1896	2149	357
Proclamation	27/1/1896	The whole	368

† The figures refer to the articles of the law or resolution.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Proclamation	29/5/1896	The whole	370
"	19/6/1896	"	372
"	19/12/1896	"	390
Government Notice No. 24 ..	31/1/1896	"	444
" " No. 130 ..	21/5/1896	"	451
Second Volksraad Resolution	23/6/1896	628	452
Government Notice No. 263 ..	31/7/1896	The whole	454
" " No. 316 ..	24/8/1896	"	457
" " No. 517 ..	4/12/1896	"	462
" " No. 481 ..	14/12/1896	"	463
Law No. 1, 1897	—	"	1
" No. 2, 1897	—	"	9
" No. 5, 1897	—	"	18
" No. 6, 1897	—	"	19
" No. 9, 1897	—	"	27
" No. 11, 1897	—	"	39
" No. 12, 1897	—	"	91
" No. 13, 1897	—	"	113
" No. 16, 1897	—	"	144
Standing Orders for Second Volksraad	—	"	146
First Volksraad Resolution ..	6/5/1897	23 & 24	161
" "	7/5/1897	50, 53	164
" "	11/5/1897	75	164
" "	17/5/1897	112	166
" "	31/5/1897	189	166
" "	22/7/1897	652	170
" "	30/7/1897	743	170
" "	16/8/1897	866	171
" "	27/8/1897	981	173
" "	12/10/1897	1491	189
" "	19/10/1897	1585	190
" "	22/10/1897	1601	191
" "	10/11/1897	1683	193
" "	11/11/1897	1693	194
Proclamation	20/5/1897	The whole	209
"	17/8/1897	"	213
Government Notice No. 245 ..	29/5/1897	"	283
" " No. 359 ..	26/7/1897	"	285
Law No. 2, 1898	—	"	8
" No. 4, 1898	—	"	10
" No. 9, 1898	—	"	22
" No. 16, 1898	—	"	169
" No. 20, 1898	—	"	229
" No. 21, 1898	—	"	245
" No. 23, 1898	—	"	364
First Volksraad Resolution ..	15/3/1898	345	307
" "	7/9/1898	1095	310
" "	7/9/1898	1108	310
" "	4/10/1898	1354	310
" "	29/11/1898	1852	313
" "	7/12/1898	1952	315
" "	31/5/1898	314	347, 348
Second Volksraad Resolution	9/5/1898	84	350
First Volksraad Resolution ..	21/6/1898	565	350
" "	30/6/1898	679	352
" "	15/7/1898	829	352

† The figures refer to the articles of the law or resolution.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.†	Page in Statute Book.
Standing Orders for Second Volksraad	—	The whole	355
Law No. 2, 1899	—	..	5
„ No. 3, 1899	—	..	11
„ No. 5, 1899	—	..	19
„ No. 16, 1899	—	..	61
„ No. 19, 1899	—	..	75
„ No. 20, 1899	—	..	78
„ No. 21, 1899	—	..	80
„ No. 22, 1899*	—	..	81
Proclamation <i>re</i> Extradition, Cape Colony	13/5/1899	..	939 (<i>Staatskoerant</i>)
Government Notice No. 36 (with Executive Council Resolution, Article 34, <i>re</i> Special War Tax)	26/1/1900	..	127 (<i>Staatskoerant</i>)
Proclamation No. 84	19/4/1900	..	337 (<i>Staatskoerant</i>)
Law No. 1, 1900	—	..	415 (<i>Staatskoerant</i>)

† The figures refer to the articles of the law or resolution.

* Law 22, 1899, was, through clerical error, omitted in *Gazette*; see Govt. Notice 301, 1901, in *Gazette*, 6th December, 1901.

Proclamation
(Trans.) No.
35 of 1901.

PROCLAMATION No. 35 OF 1901.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.
(Dated 10th December, 1901.)

Preamble.

WHEREAS it is desirable to relieve certain coloured persons residing in this Colony from the operation of the Law relating to passes and such other Laws as the Administrator of the Transvaal may from time to time notify;

Now, therefore, by virtue of the authority in me vested, I do hereby declare, proclaim, and make known as follows:—

Exemptions
from law as to
native passes.

*1. Any ordained coloured minister of a recognized Christian denomination, any coloured person holding a certificate of qualification as an elementary teacher or any higher educational certificate from the Education Department in this or any other British Colony, and any coloured person who exercises a profession or trade may apply to the Commissioner for Native Affairs for a Letter of Exemption in the form in the Schedule hereto annexed relieving him from the operation of the law relating to passes or such other laws as may from time to time be notified in the *Gazette* by the Administrator of the Transvaal.

How letters of
exemption
issued.

2. (1) Every Letter of Exemption shall be signed by the Commissioner for Native Affairs, and shall be registered, and a copy thereof filed in his office, and shall have endorsed thereon the date of such registration.

(2) No such Letter of Exemption shall be issued to any person applying therefor until he shall have taken an oath or declaration or affirmation of allegiance to His Majesty, His Heirs or Successors, before some person authorized to administer the same.

Duty of
holders of
letters of
exemption.

3. Every coloured person who has obtained a Letter of Exemption shall carry it with him, and shall produce it at the request of any police or pass official, and on failure to do so shall be liable on conviction to a fine not exceeding 10s., or in default thereof to imprisonment not exceeding three days.

Application
for letters of
exemption.

4. Every application for a Letter of Exemption shall be made by petition to the Commissioner for Native Affairs, and the following requirements shall be complied with by the applicant:—

(a) The petition must state the petitioner's full name, age, and residence, place of birth, and the length of time he has resided in this Colony; his trade or profession.

(b) In the case of a minister of religion, the petition must state the date of his ordination, the person by whom he was ordained, and the religious denomination of which he is a minister.

* See Ord. No. 28 of 1902, extending the classes of natives to whom exemption from the Pass Law may be granted; also Ord. No. 43 of 1902, exempting from the operation of the Pass Law persons coming within the provisions of the above Proclamation or of Ord. 28 of 1902.

(c) Where the petitioner is the holder of a certificate of qualification as an elementary teacher or of any higher educational certificate, such certificate must be produced by him.

5. To every such petition there shall be attached an affidavit sworn to, solemnly declared, or affirmed by the petitioner before any justice of the peace in this Colony verifying the allegations in the petition.

6. Any person who shall wilfully and falsely swear, solemnly declare, or affirm that his allegations in the said petition are true when in truth they are not shall be deemed to be guilty of perjury and on conviction shall be liable to the penalties by law provided for that offence.

False oaths and affirmations—penalty.

7. The Commissioner for Native Affairs shall have full power and authority to investigate the truth of the statements contained in the petition or to require the petitioner to furnish any additional information or any explanation he may consider necessary; and the said Commissioner may for any reason which appears to him sufficient refuse to issue to such petitioner a Letter of Exemption.

Powers of Commissioner of Native Affairs as to investigation of truth of statements.

*8. It shall be lawful for the Administrator from time to time to notify in the *Gazette* any other laws to be included under this Proclamation, and on such notification as aforesaid the provisions of this Proclamation shall *mutatis mutandis* apply to the laws mentioned in such notice.

Power to Governor to include other laws in this Proclamation.

9. Every person to whom a Letter of Exemption shall be granted under this Proclamation shall from and after the date of the delivery of such letter to him be deemed and reckoned as exempt from the provisions and operation of the laws mentioned in the first paragraph hereof or hereafter notified in the *Gazette*.

10. This Proclamation shall be cited for all purposes as the Coloured Persons' Exemption (or Relief) Proclamation, 1901.

Title.

SCHEDULE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING :

WHEREAS under the provisions of the "Coloured Persons' Relief Proclamation, 1901", I am empowered to grant Letters of Exemption to any coloured person residing in this Colony and coming within any of the classes of coloured persons described in section one of this Proclamation; and whereas A. B., being at the present time residing at..... in the District of....., has in conformity with the provisions of the said Proclamation been deemed to be entitled to be relieved from the operation of certain laws mentioned in the said Proclamation and in Government Notice.....;

NOW KNOW YE that by and under the powers vested in me by the said Proclamation I do hereby make known and declare that A. B. shall be and is hereby declared to be exempted from and taken out of the operation of the laws relating to passes and to (here mention any other laws included in the Proclamation by notice in the *Gazette*).

Given by me this.....day of..... in the year of our Lord..... at.....

(Signed)..... Commissioner for Native Affairs.

* By Govt. Notice No. 496 of 1902, the Native Tax Ordinance (No. 20 of 1902) was notified as a law included under this Proclamation. That Ordinance has now been repealed by Act No. 9 of 1908 and its provisions re-enacted with amendments.

Proclamation
(Trans.) No.
37 of 1901.

PROCLAMATION No. 37 OF 1901.†

By HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 10th December, 1901.)

Preamble.

WHEREAS it is expedient to make better provision for regulating the entry of natives into the Transvaal from places beyond the borders thereof and their return thereto; for the departure from the Transvaal, or the return thereto, of natives residing therein; for the protection and security of natives travelling within the Transvaal; and for the control and regulation of native labourers *in this Colony*.||

Now, therefore, by virtue of the authority in me vested, I do hereby proclaim, declare, and make known as follows:—

1. The Administrator of the Transvaal may from time to time make regulations for any of the following purposes, and provide penalties for the contravention thereof:—

Governor
power to
make
regulations.

(1) For regulating the entry of natives into this Colony from any place beyond the borders thereof and their return thereto; their travelling from place to place in this Colony; and their sojourn therein.

(2) For regulating the travelling from place to place within this Colony of natives residing therein; their departure therefrom to places beyond the borders thereof and their return thereto.

(3) ‡ For regulating the introduction and supply of native labour in this Colony and ensuring the better control of natives in service.

Such regulations shall, on publication in the *Gazette*, be of full force and effect.

Penalty for
contraven-
tion of
regulations.

2. ¶ Any person contravening any of the regulations made under this Proclamation shall be liable to the penalties provided thereby, and in the absence of any penalties expressly provided in such regulation he shall be liable to pay a fine not exceeding *ten* pounds, or in default of payment thereof to imprisonment for a term not exceeding six months, with or without hard labour, or to both such fine and such imprisonment; provided that one-half of any fine may be awarded by the Court by which it is imposed to the informer on whose information such person shall have been convicted.

Moiety may
be awarded
to informer.

Persons
harbouring
or aiding
natives in
violation
hereof to be
deemed guilty
of a contra-
vention.

3. Any person who shall harbour any native contravening any of the aforesaid regulations, or who shall in any way aid or abet any native to contravene the same, shall on conviction be liable to the penalties provided in the last preceding section.

† As to exemptions from passes see Tr. Pr. 35, 1901, Ord. 28, 1902, and 43, 1902.

‡ As amended by Ord. No. 27 of 1903, sec. 1 (1).

¶ As amended by Ord. No. 27 of 1903, sec. 1 (2).

4.* The term "native" in this Proclamation and the regulations thereunder shall include every male person above the age of fourteen years belonging to any of the aboriginal races or tribes of Africa south of the Equator and every male person one of whose parents belongs to any such race or tribe as aforesaid; the term "employer" shall, in the case of a company, mean the responsible manager thereof, and if there be no manager then the person registered as responsible for the control, management, and direction thereof; the term "labour district" shall mean any area proclaimed as such by the Administrator; and the term "district" shall mean an area subject to the jurisdiction of a Court of Resident Magistrate.

Definition of terms.

†The areas defined as labour districts by Law No. 23 of 1899 shall be labour districts under this Proclamation until altered as aforesaid.

What are labour districts.

5. (1) It shall be lawful for the Administrator from time to time to appoint in each labour district so many inspectors of natives as he may think necessary, whose duty it shall be

Appointment of native inspectors.

(a) to inquire into and redress if possible or otherwise to report to the Commissioner for Native Affairs any grievances complained of by natives employed within such district as aforesaid;

(b) to inquire into and determine all breaches of discipline and minor contraventions of regulations made under this Proclamation by any such natives as aforesaid;

(c) to hear and determine any matter or dispute of a civil nature between any such natives as aforesaid;

(d) to enter any place occupied by natives and to arrest any offender against regulations made under this Proclamation or any amendment thereof and where the offence is not one which the inspector is authorized to deal with under this and the next succeeding section to deliver such offender to a constable to be brought before the Court of the Resident Magistrate.

When such matter or dispute is in reference to money alleged to be due to one native by another an order by the inspector for the payment of such money may be discharged by the employer and deducted by him from any wages due to the native against whom such order was made.

* This definition of "native" has been amended by Ord. No. 27 of 1903, sec. 2.

† For labour district areas of Johannesburg, Germiston, Boksburg, Springs, Krugersdorp, Middelburg, Pretoria, Klerksdorp, Heidelberg, and Vereeniging, see Proc. (Admn.) 48, 1904, amended by Proc. (Admn.) 64, 1906 (Klerksdorp); 56, 1907 (Middelburg); 2, 1908 (Krugersdorp); 28, 1910 (Witbank). For labour district areas of Waterberg and Rustenburg, see Proc. (Admn.) 7, 1910; Middelburg and Pretoria labour districts are designated Witbank and Rayton; and Rustenburg and Waterberg labour district is designated Rooiberg, see Govt. Notice No. 106, 1910.

|| As amended by Ord. No. 27 of 1903, sec. 1 (3).

¶ Sub-sec. (d) added by Ord. No. 27 of 1903, sec. 1 (4).

(2) Every such employer shall afford every facility in his power required for such investigation by an inspector, and any employer refusing to do so shall be guilty of an offence against this Proclamation, and shall be liable, on conviction by any Court of Resident Magistrate, to a fine not exceeding *fifty* pounds, and in default of payment to imprisonment, with or without hard labour, for a term not exceeding six months.

Powers of inspectors.

6. For the purpose of inquiring into and determining such grievances, disputes, breaches of discipline, and contraventions of regulations, such inspector as aforesaid shall have the following powers:—

(1) He may examine witnesses on oath.

Any person giving false evidence in any such inquiry shall be deemed guilty of perjury, and shall be liable to the penalties provided by law for the commission of that crime.

(2) He may, on finding any native guilty of a breach of discipline or a contravention of any regulation, impose a fine on him not exceeding *five* pounds, and in default of payment, the employer of such native shall withhold the said amount from any wages due to such native and pay it over to the inspector for the benefit of the Colonial Treasury.

No deduction to be made from wages of native.

7. No deduction otherwise than as provided by the last preceding sections, or by a sentence of a competent Court, shall be made from the wages of any native *actually earned by him*.*

Regulations in schedule to be of full force until revoked.

8. The regulations in the schedule to this Proclamation shall be of full force and effect until revoked or amended, and there shall be paid on the “passes” and “passports” in the said regulations mentioned the fees therein prescribed.

Proclamation Transvaal No. 23 of 1901 applies to passports.

9. The term “district pass”, wherever it occurs in Proclamation Transvaal No. 23 of 1901 shall be taken and read as “Labour Identification Passport”, and the term “native” in the said Proclamation shall be covered by the definition of that term in section *four* of this Proclamation.‡

10. It shall be lawful for the Administrator to establish at every pass office in a labour district guard rooms of adequate size in which it shall be lawful to detain for a period not exceeding six days any native suspected of desertion from the service of his employer.

Repeal of laws.

11. The following laws shall be and are hereby repealed:
Law No. 22 of 1895;
Law No. 23 of 1899;

and so much of any other law as may be inconsistent with or repugnant to the provisions of this Proclamation.

Title and taking effect of Proclamation.

12. This Proclamation may be cited for all purposes as the Native Passes Proclamation, 1901, and shall take effect from and after the second day of January next.

* Words in italics added by Ord. No. 27 of 1903, sec. 1 (5).

‡ See new amended definition under Ord. No. 27 of 1903, sec. 2.

SCHEDULE.

* GENERAL PASS REGULATIONS.

1. No native shall save as hereinafter excepted enter travel within or leave this Colony unless he be in possession of a pass duly issued for that purpose by an authorized official.

2. Any native who has obtained a pass to proceed to any place within the Transvaal issued by an authorized official in any British Territory *†or in any of the Portuguese possessions* in South Africa may travel in the Transvaal to such place upon having such pass endorsed by the official in this Colony who is conveniently nearest the place where such native has entered it.

3. Any native residing on a farm or on any private property in this Colony or in a Government Native Location who desires to travel within this Colony for the purpose of visiting or on the business of his employer may do so upon a permit or note issued by the owner of the farm or private property on which he resides or by an official or native chief appointed by the Commissioner for Native Affairs to issue such notes or permits to natives residing in such location as aforesaid or by his employer as the case may be.

Such permit or note shall bear the date when and shall state the purpose for which it was issued provided that the duration of any such permit or note shall not exceed *†ten* days.

§ *In case any native shall by reason of his residing on a farm unoccupied by a European or for other sufficient cause be unable to obtain a note or permit as required in this section he shall be at liberty to proceed to the nearest pass officer or other Government official for the purpose of obtaining such permit or note as aforesaid or for the purpose of obtaining a travelling pass under the next succeeding regulation without rendering himself liable to any penalty under these regulations.*

|| *Any person who fabricates forges or utters knowing the same to be forged a note or permit as mentioned in this regulation or a special permit as mentioned in Regulation No. 25 purporting to authorize any native to travel within or without this Colony shall be guilty of an offence and liable on conviction to the penalties provided by Regulation 8.*

|| *Any person not having authority under these regulations to issue permits to natives who does issue a permit purporting to authorize a native to travel within or without the Colony shall be liable on conviction to the penalties provided by Regulation 8.*

4. Except as provided in the preceding section any native within this Colony who desires to proceed for work within the district in which he resides or to go beyond the district on his own business or that of his employer shall obtain at the nearest pass office an official travelling pass in the form hereto annexed and marked 1 G. on which he shall pay the sum of one shilling.

5. No pass to travel shall be issued to any native apparently suffering from infectious disease.

6. In order to prevent vagrancy and habitual idling any native found wandering abroad without a proper pass or travelling otherwise than in the direction indicated in his pass may be apprehended by any officer authorized by law to arrest or by any person upon whose property he is found and shall be forthwith brought before the nearest officer empowered to deal with offences against the Pass Law ***and on conviction shall be liable in the case of a first offence to a fine not exceeding one pound and in default of payment to imprisonment with hard labour not exceeding seven days and in the case of a second or subsequent offence shall be liable to a fine not exceeding two pounds and in default of payment to imprisonment with hard labour not exceeding fourteen days.*

7. (1) No person may employ or take into his service any native who is not provided with a proper pass which such employer shall demand from him and retain in his possession until the expiration of his period of service when it shall be returned to him with an endorsement thereon by the employer correctly dated of the discharge of such native from his employ; and on the production thereof to any official such native shall be entitled to an endorsement thereon without any charge enabling him to return to his home.

* These regulations were substituted by Proc. (Admn.) No. 18, 1903.

† Words in italics inserted by Proc. (Admn.) No. 82, 1905.

‡ This word substituted by Proc. (Admn.) No. 15, 1906.

§ This paragraph added by Proc. (Admn.) No. 15, 1906.

|| These paragraphs added by Proc. (Admn.) No. 4, 1907.

** Words in italics added by Proc. (Admn.) No. 15, 1906.

(2) This regulation shall not apply to the owner or lessee of a farm employing a native residing thereon.

(3) Every native who is by law obliged to carry a pass shall produce it when required so to do by police or other authorized officials.

(4) Officers of the Native Affairs Department and native police employed by the Government or Municipal Authorities shall have the power to arrest any native suspected or charged with any offence against these regulations with or without a warrant.

8. Any person who unlawfully deprives a native of his pass or maliciously withholds it from him or maliciously destroys or alters it or who grants a permit to a native to travel who is not in his employ or who forges a pass shall be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months.

9. No railway ticket shall be issued to a native unless he is in possession of a permit note or pass issued under these regulations.

10. No native coming within the following list of exemptions shall be required to take out a pass to enter leave or travel within this Colony:—

(a) Native police or messengers while on the service of the Government of this Colony provided that such native police or messengers are in possession of a certificate of employment signed by the head of the department to which they belong.

(b) Any native driver leader or personal attendant in the employ of an European master whilst actually engaged as such and producing a pass signed by his employer.

(c) Any native to whom a letter of exemption or registration certificate has been granted by the Commissioner for Native Affairs.

11. Any native who shall claim to be exempted from taking out a pass by virtue of the provisions of sub-section (c) of the foregoing regulation may be required to satisfy any magistrate official or police officer that he is entitled to exemption either by production of his letter of exemption or otherwise.

12. No pass shall include the name of more than one person provided that when any native taking out a pass is accompanied by his wife or children under the apparent age of fourteen years a note made on the pass referring to and setting forth the name of the wife and number of children shall be a sufficient authority for such wife and children to enter or leave or travel within the Colony under such pass.

13. An official shall have the discretion to refuse to issue or endorse a pass to any native to enter or depart from this Colony or travel therein for any reason appearing to him sufficient.

14. If an official shall refuse to issue or endorse a pass he shall report such refusal to the Native Commissioner or if there be no Native Commissioner to the Resident Magistrate of the district who shall direct the official to issue the same or not as he shall deem fit.

15. The Commissioner for Native Affairs shall have full authority and discretion in any case to order that a pass shall be issued or refused to any native notwithstanding any prohibition or other provision contained in these regulations.

16. Any native who shall have lost his pass shall be required to obtain a duplicate thereof from the official on payment of the proper fee.

17. Every official shall enquire of every native who applies for a pass to seek work or for an endorsement of his pass to return home whether he is under an unexpired contract of service and any applicant making a false statement in reply to such enquiry shall be deemed guilty of a contravention of these regulations.

18. No pass shall be granted to a native who is known by the Magistrate or official to be under an unexpired contract of service except with the consent in writing of the employer.

19. It shall not be lawful for any native to enter and be upon the property of any person (unless he be in such person's employ) without the permission of the person in charge of such property or without a note from his employer stating the object for which he is on such property; an open delivery note accompanying goods from a merchant or other tradesman shall be considered as such a note.

20. The above regulations shall apply to all districts in this Colony including labour districts except in so far as they may be in conflict with the next succeeding regulations.

The expression "pass" in these regulations shall in labour districts include the "Identification Labour Passport" hereinafter referred to.

* REGULATIONS FOR LABOUR DISTRICTS.

21. Any native residing in the Transvaal or coming from beyond the borders thereof desiring to work within any labour districts must be provided with an "Identification Labour Passport" hereinafter referred to as a passport in the form hereto annexed and marked 1 L, which shall be filled in as required thereby and shall be available to him for return home. A passport shall contain a complete record by which the holder may be identified and his movements traced and shall in any Court of Law be *prima facie* evidence of the facts therein recorded. It shall not be available after final endorsement for return home for any purpose other than that for such return.

22. Every native accompanied by a licensed labour agent shall before being granted a passport be questioned by the official as to the terms of his agreement of service and whether such service is voluntary on his part. In the event of it being found that there was coercion or misrepresentation on the part of the labour agent in obtaining the service of such native or that the agreement of service is in other respects void such native may be sent back to his home at the expense of the labour agent or his employer.

23. Every native engaged by a labour agent to work in any labour district must within three days after his arrival therein be conducted by such agent or his representative to the pass office and shall there obtain a passport which shall be registered by the official who shall record the name of the employer and the terms of the agreement of service. On every such registration there shall be paid by the employer a fee of one shilling.

24. (1) Every native entering a labour district to seek work shall obtain a passport and report himself at the pass office therein within twenty-four hours after arrival in such district and shall thereafter be allowed six days to enable him to find an employer. The employer when found shall within three days have the said passport registered and shall pay the fee thereon as provided in the last preceding regulation.

(2) If such native fails to find work within six days from the date of issue of the passport or within six days from the date of discharge by his last employer he shall return to the pass office and his passport shall be endorsed to return home or to proceed to another labour district at the discretion of the official.

(3) Any native who fails to have his passport so endorsed or who is found in a labour district without a passport or who remains in the district longer than twenty-four hours after his passport has been endorsed shall be liable to pay a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding one month.

(4) Any native who

(a) is in possession of or makes use of a passport monthly pass or travelling pass belonging to another; or

(b) refuses to give or gives falsely any of the particulars in use upon passports; or

(c) falsely states that he has not been previously registered or makes any other false statement or commits any other act with the object of deceiving any authorized official or of contravening these regulations; or

(d) hands over to any other native his passport hereinbefore described and belonging to himself shall be deemed to be guilty of contravening these regulations and shall be punished with a fine not exceeding ten pounds or imprisonment with or without hard labour not exceeding three months.

25. Any native employed within a labour district sent by his employer on business beyond the boundaries of the town or municipality in which he resides or who with the consent of his employer travels within or beyond such district shall be provided by such employer with a special permit in addition to his passport. Such permit shall not extend beyond three consecutive days and shall set forth the object for which it is granted and the date of its issue.

26. It shall not be lawful for any native to enter and be upon the property of any company or person (unless he be in the employ of such company or person) without the permission of the person in charge of such property or without having in addition to his passport a note from his employer stating the object for which he is on such property; an open delivery note accompanying goods from a merchant shopkeeper and any other tradesman shall be considered as such a note; and it shall not be lawful for the person in charge of such property to grant permission to enter and be upon such property to any native not in the possession of a proper pass or note as aforesaid.

* These regulations were substituted by Proc. (Adm.) No. 18, 1903.

27. Upon the engagement of any native the employer shall retain the passport of such native and shall procure for him a monthly pass in the form hereto annexed.

28. Upon each such pass which shall be available only for the calendar month in which it was issued there shall be payable in advance by the employer of the holder thereof a fee of two shillings.

The employer shall be responsible that all natives in his service are furnished with proper monthly passes upon expiry of which three days are allowed for renewal.

At the time of issue under this regulation of the first monthly pass and in all cases of change of employer the passport must be produced to the official.

The employer shall be accountable for the safe keeping of all passports of natives in his service and at the expiration of the term thereof shall note thereon in ink particulars of discharge as required and shall then restore the passport to the lawful owner; provided that

(1) any native in a labour district who is a daily labourer or follows any occupation by which he is not under any contract of service to any particular person may at the discretion of the official take out a passport which shall be filed at the pass office and upon which he shall pay the registration fee. Such native shall then receive a monthly pass and shall renew the pass monthly upon expiry and pay the fees thereon.

(2) Native ricksha pullers shall be registered to the ricksha owners who for all the purposes of these regulations shall be regarded as the employers. Passports issued for such native ricksha pullers shall operate as contracts of service under **section twenty-one hereof*, provided that a minimum monthly wage is agreed upon and duly recorded in every such passport.

† 29. *A labour contract or agreement with any native shall not unless with the special sanction of the Commissioner for Native Affairs extend beyond one year which shall consist of not less than 313 working days after which it may be renewed by endorsement upon his passport but the yearly contract shall not be deemed to have expired unless the native shall have actually worked for such 313 days. Portions of a year shall be held to consist of a proportionate number of working days.*

30. (1) Upon termination of such contract as is referred to in the last preceding regulation the employee shall be entitled unless such contract be renewed or a new contract made by him to demand from the employer his passport duly discharged.

(2) The renewal of a contract or the making of a new one shall be endorsed on the passport and the terms and particulars thereof registered at the pass office of the district in which such contract is to be performed.

31. Any native who while under contract of service to one employer shall knowingly enter the service of another employer shall on conviction be liable to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding three months; and any employer who knowingly engages and takes into his service a native while the latter is still bound by a contract of service to another employer shall on conviction be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding six months.

32. (1) Any native who shall be guilty of desertion or shall leave the service of his employer with intent to desert before the term of his contract of service with such employer shall have expired; or

(2) shall after having entered into a contract fail or refuse without lawful cause to commence the service at the stipulated time; or

(3) who shall without leave or other lawful cause absent himself from his master's premises or other place proper for the performance of his work; or

(4) shall during working hours unfit himself from the proper performance of his work by becoming intoxicated; or

(5) shall neglect to perform any work which it was his duty to have performed or who shall carelessly or improperly perform the same or shall refuse to obey any lawful command of his master or of any person lawfully placed by his master in authority over him or of any Inspector of Natives or shall by wilful breach of duty or neglect of duty do any act tending to the immediate loss damage or serious risk of any property placed by his master in his charge or shall use any abusive language to his master or to any person placed in authority over him calculated to provoke a breach of the peace shall be liable to a fine not exceeding ten pounds and in default of payment to imprisonment with or without

* Words in italics substituted by Proc. (Admn.) No. 4, 1907.

† This regulation substituted by Proc. (Admn.) No. 56, 1903.

hard labour for a term not exceeding three months; and after having satisfied the sentence imposed on him he shall if his employer so desire be ordered to return to work and to complete the term of his contract.

33. The passports of such natives as have deserted or die shall be sent within six days of such desertion or death to the official of the Inspector of Mine Natives as the case may be with full particulars of dates of such desertions deaths or causes of such deaths.

At every office at which passports are registered (hereinafter referred to as a registry office) a book shall be kept for the registering of native deaths.

34. Any native who has lost his passport may apply for a new one which shall be supplied upon payment of a fee of one shilling provided the official to whom the application is made is satisfied of the identity and *bona fides* of the applicant.

If the loss or defacement of the passport be due to the employer the latter shall pay the aforesaid fee.

35. Every employer of more than twenty native labourers shall be required to keep for each month a correct account according to a form (to be had at every registry office) showing during each month:

- (a) number of natives employed by him;
- (b) number of contracts with natives made by him which have expired;
- (c) number of new contracts with natives made by him;
- (d) number of deaths and desertions of natives employed by him.

A copy of these particulars shall within ten days after the end of each month be sent to the said registry office. Such account as aforesaid shall be open for inspection by any authorized Government official.

36. Any employer in a labour district having work to be done in another labour district and wishing to transfer natives in his service to that district temporarily shall apply in writing to and obtain permission from the officer at the registry office attaching to his application a list in duplicate of the names of such natives and the numbers of the passports.

On obtaining the necessary permission he shall forward one list to the registry office in the district to which such natives are transferred.

37. *Any person who shall illegally withhold a passport from a native or who shall defraud a native of his wages or deduct therefrom any sum of money not authorized to be deducted under Proclamation No. 27 of 1901 or any amendment thereof or who shall in order to punish any native accept or obtain money or goods from him shall upon conviction be liable to a fine not exceeding fifty pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding six months or to both such fine and imprisonment.

38. It shall not be lawful for any person within any labour district

- (a) to engage or have in his service any native who has not a labour passport showing that such native has been properly discharged by his last employer or that he has not previously been employed under such passport;
- (b) to engage or have in his service any native whose passport shows that he has been discharged for longer than six days or that he has been in the labour district in which his passport has been endorsed for more than six days without finding work or whose passport is not endorsed by the medical officer at the pass office under Proclamation Transvaal No. 23 of 1901;
- (c) to harbour any native who is not in his lawful employ;
- (d) to refuse at the request of a native on the termination of his contract of service to sign his discharge;
- (e) to tamper in any way with a passport belonging to a native not in his employ;
- (f) to issue permits to visit or travel to any native not in his *bona fide* employ;
- (g) to register himself as the employer of a native unless it is his *bona fide* intention to employ such native.

Any person guilty of contravening any of the provisions of this regulation shall be liable to a fine not exceeding fifty pounds or in default of payment to imprisonment with or without hard labour for a term not exceeding six months.

39. Any person guilty of forging imitating altering or wilfully destroying any passport which may in terms of these regulations have been issued by an official or of uttering the same or guilty of forging or uttering counterfeit passports shall upon conviction be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding six months; or to both such fine and imprisonment.

* This section was substituted by Proc. (Admn.) No. 1, 1905.

40. (1) Every native who shall have been discharged from gaol shall be sent by the officer in charge thereof to the registry office in the labour district in which such gaol is with a letter of discharge which shall state the nature of the offence for which he was punished and the term of imprisonment he has served and any native convicted of a criminal offence for which a fine was imposed and paid shall be sent by the Clerk of the Court before which he was convicted to the registry office with a similar letter of discharge. Every native discharged from gaol shall at the option of his master be compelled to return and complete the term of his engagement.

(2) A native sent to the registry office as aforesaid having a passport but no master shall be granted six days to find one.

(3) A native sent to the registry office as aforesaid not having a passport shall have one issued to him and shall be allowed six days to look for work.

(4) The provisions of Regulation No. 24* shall *mutatis mutandis* apply to the native referred to in sub-sections (2) and (3) of this regulation.

41. The Government shall erect a rest-house at each passport office or where it is deemed necessary for the accommodation and rationing of natives who are seeking work in any labour district and any native accepting such accommodation shall pay a fee of one shilling a day.

42. The term "official" in these regulations shall mean any person authorized to issue passes.

SCHEDULE D.

**NATIVE LABOURER'S MONTHLY PASS.
LABOUR DISTRICT OF GERMISTON.**

No. of Identification Passport.....
 Name (Native).....
 Name known by.....
 Name of Employer.....
 Address of Employer.....
 Signature of Employer.....
 Date of Issue.

N.B.—This pass holds good only for the calendar month in which it was issued should the holder change his Employer during that month, the new Employer must at once take out a new monthly Pass for the holder.

No. 1 G.

TRANSVAAL ORDINARY TRAVELLING PASS.

Serial No.....
 1. Name (Native).....
 2. Name known by.....
 3. Location or Place of Residence.....
 4. Tribe or Nationality.....
 5. Travelling to.....
 6. By way of (Route).....
 7. For purpose of.....
 8. Has in his possession (stock or property).....
 Issued at.....
 Date.....190.....

Signature of Pass Officer.

Front of Form.]



ENDORSEMENT FOR TRANSFER OR RETURN HOME.

To proceed to.	Date.	Signature.	Stamp.

* Figures in italics substituted by Proc. (Admn.) No. 1, 1905.

Back of Form.]

NATIVE IDENTIFICATION LABOUR PASSPOPT *(To be held by Employer).*

Form 1 L. Labour District of Johannesburg.

Registered No.
 Name (Native)
 Name (known by).....
 Father's Native Name.....
 Tribe and Chief.....

 Place of Residence.....

 Date of Issue

No. of Contract.	Name of Employer.	Address of Employer.	Period of Service.		Rate of Pay.	The particulars of these three columns are to be filled in by employer only.		
			From.	To.		Date of discharge.	Character.	Employer's Signature on discharge.
1								
2								
3								
4								
5								
6								

N.B.—The five columns below are for the use of the Pass Office only.

[495]

1. Within three days of engaging a native the employer must have his name and address registered at the Pass Office.
2. Employer must sign discharge and surrender passports to native on completion of contract.
3. It is not lawful to engage a native who has been longer than six days out of work.
4. Death or desertion must be reported at Pass Office immediately.

PROCLAMATION No. 38 OF 1901.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 10th December, 1901.)

Proclamation
(Trans.) No.
38 of 1901.

Preamble.

WHEREAS it is expedient to regulate and control the procuring and engaging of natives to do work or labour within or beyond the borders of the Transvaal Colony;

Now, therefore, by virtue of the authority in me vested I do hereby declare, proclaim, and make known as follows:—

Governor
power to
make regula-
tions.

1. The Administrator of the Transvaal may from time to time make regulations for the purpose of regulating and controlling the procuring and engaging of natives to do work or labour within or beyond the borders of the Transvaal; and of regulating the issue, suspension, and cancellation of licences to persons exercising or desiring to exercise the calling of labour agents and compound overseers, and the fees to be paid for such licences.

Such regulations shall, on publication in the *Gazette*, be of full force and effect.

Definition of
terms.

2. The term "labour agent" shall mean and include any person who shall himself, or through agents or messengers, in his own name or otherwise procure or attempt to procure, seek for, engage, conduct, take charge of, supply or undertake to supply natives to be employed in work or labour of any kind within the Transvaal; provided that the term "labour agent" shall not include any person who procures or engages or conducts natives for his own bona fide domestic or personal service or business exclusively; provided that the total number of natives so employed by him does not exceed twenty at any one time.

The term "native" in this Proclamation and the regulations made thereunder shall include every person belonging to any of the aboriginal races or tribes of Africa south of the Equator and every person one of whose parents belongs to any such race or tribe as aforesaid; the term "compound overseer" shall mean and include any person having the charge, management, or superintendence of *fifty* or more natives employed to work in any labour district; the term "employer" shall, in the case of a company, mean the responsible manager thereof, and, if there be no manager, then the person registered as responsible for the control, management, and direction thereof.

Penalty for
contravening
regulations.

3. Any person contravening any of the regulations made under this Proclamation shall be liable on conviction to the penalties provided by such regulation, and if no penalty be provided then to a fine not exceeding *ten* pounds, or in default of payment to imprisonment, with or without hard labour, for a period not exceeding six months. Any such contravention

wherever committed may be summarily dealt with by any officer empowered to deal with contraventions of this Proclamation within whose jurisdiction the person accused of such contravention may be; and such officer shall, on the conviction of any person for a contravention of any of such regulations as aforesaid, make a report thereof to the Commissioner for Native Affairs.

4. The regulations in the Schedule annexed to this Proclamation shall be of full force and effect until revoked or amended, and there shall be paid on the licences in the said regulations mentioned the fees therein prescribed.

5. This Proclamation may be cited for all purposes as the Labour Agents and Compound Overseers Proclamation, 1901.

Regulations in
Schedule to be
of full force
until revoked.

Title.

SCHEDULE.

A.—LABOUR AGENTS.*

1. It shall not be lawful for any person to act as a Labour Agent within the Transvaal for the purpose of any direct or indirect profit, gain, or other valuable consideration, unless he shall be duly licensed to do so under these Regulations; provided always that a native runner employed by a licensed labour agent in the conduct of his business shall not be deemed to have contravened this Regulation by reason only that he has acted as such runner; provided that such native shall have been approved of by the Native Commissioner or Native Sub-Commissioner of the district in which he is employed, and shall carry with him a permit from such officer.

2. It shall not be lawful for any person to procure, engage, or conduct natives within the Transvaal for employment beyond its borders, unless he shall be duly licensed to do so under these Regulations.

3. Application for such licence to exercise the callings in the last two preceding Regulations mentioned shall be made on a printed form to the Minister for Native Affairs or any officer appointed by him thereto, either direct or through the Native Commissioner of the district in which the applicant wishes to exercise his calling, or, in the case of any person wishing to act as a travelling conductor of natives, to the Native Commissioner of the district in which the journey is to begin.

4. Every application for any such licence as aforesaid shall be accompanied by a statement giving the following particulars:—

- (a) Copy of the agreement between the applicant and his employer.
- (b) The place or the places where the natives to be engaged or conducted by him are to work.
- (c) The name of the district in which the applicant desires to engage labourers; the route which he desires to follow (if he is a conductor); and, in cases where the applicant proposes to receive and conduct natives recruited beyond the borders of the Transvaal, the name or names of the person or persons who hold licences to recruit such natives.
- (d) Particulars of any previous labour agent's licence issued to the applicant, or refused, cancelled, or suspended in any place in South Africa.
- (e) The applicant shall at the same time deposit with the officer to whom his application is made, and to the satisfaction of such officer, security to the amount of one hundred pounds for all charges and fines for which he may become liable.

Every such security shall endure and be effective during the currency of the licence and for a period of six months after its expiration, or after the cancellation thereof under these Regulations.

Provided that any person who has become surety for a Labour Agent under these Regulations may give notice in writing of his withdrawal of such surety, and fourteen days after receipt of such notice

* These Regulations were substituted by Govt. Notice No. 1063 of 1907.

the surety shall be deemed to have lapsed in respect of any acts performed thereafter, but shall endure in respect of acts performed prior to the termination of the surety for a period of three months and fourteen days after receipt of such notice aforesaid.

The Minister for Native Affairs or the officer appointed by him thereto may, on receiving the notice of withdrawal of security or if the security in any other way becomes void, call on the Labour Agent in respect of whom the said security was provided to provide fresh security within a period of not less than seven days, and if he fails to do so the said licence may be cancelled.

(f) The applicant shall fix a *domicilium citandi et executandi* within the Transvaal.

5. Every Labour Agent shall furnish to the Minister for Native Affairs or to any officer appointed by him thereto all such returns regarding the labourers recruited by him as may be required from time to time.

Returns concerning the requirements, employment, and recruitment of native labour shall be rendered in like manner by every employer who may be called upon to do so.

6. Any person neglecting or refusing to supply such returns or wilfully giving any false particulars in such returns as aforesaid shall be guilty of an offence, and shall on conviction be liable to the penalties mentioned in Regulation *twenty-eight*.

7. The application when made through a Native Commissioner or Native Sub-Commissioner shall, together with a confidential report by him thereon, be forwarded to the Minister for Native Affairs, and the said Minister or any other officer appointed for the purpose by the Minister may issue the licence specified in such application; provided that the issue, renewal, or assignment of any such licence may be refused by the Minister without assigning the reason.

8. The amount payable for such licence shall be at the rate of fifteen pounds sterling for each year. Such licence may be issued for any period not less than three months and not exceeding twelve months, and shall in no case extend beyond the thirty-first day of December in the year in which it is issued.

* 9. Any licence may be assigned by endorsement; provided the security is renewed, and subject to the sanction of the Minister for Native Affairs or any officer appointed by him thereto.

10. The issue of a licence to any person shall not confer any right to its renewal.

11. (a) Any Labour Agent who has been convicted of any crime and sentenced to imprisonment therefor without the option of a fine by a Court of Law, or who has been convicted of any contravention of these Regulations or of any law relating to native labour or native passes, or who has had his labour agent's licence cancelled or suspended in any other Colony or territory in South Africa, shall be liable to have his licence cancelled or suspended by the Minister for Native Affairs or by any officer appointed by him thereto in this Colony, in addition to any other punishment to which he may have rendered himself liable.

(b) In case of any such cancellation as aforesaid the security deposited by him under Sub-Section (c) of Regulation *four* may be forfeited to the Treasury.

(c) Any Labour Agent who, in the opinion of the Minister for Native Affairs or of any officer of the Native Affairs Department to whom the power to suspend or cancel licences has been delegated by him, has been guilty of any misconduct which renders it undesirable that he should be allowed to continue to carry on the calling of a Labour Agent under these Regulations shall be liable to have his licence suspended or cancelled.

(d) Notice of such suspension or cancellation may be given to the Labour Agent by registered letter duly addressed to the *domicilium citandi et executandi* fixed by him; and after the expiration of seven days from the date of posting such notice the said licence shall cease and determine.

12. Any agent holding a licence who desires to exercise the rights granted thereunder in any district other than that specified on such licence shall before doing so and upon as soon as may be after entering such other district for that purpose, immediately report himself to the Native Commissioner or Native Sub-Commissioner who may grant him permission to exercise such rights as aforesaid in such district. Such permission, if granted, shall be endorsed upon the licence, and notice thereof shall be sent to the officer by whom such licence was issued.

* As amended by Govt. Notice No. 1093 of 1908.

13. No licence shall be issued to engage natives except for one or more employers to be specified in the original licence or subsequently by the Director of the Government Native Labour Bureau, and the district or districts for which it is issued shall be clearly defined.

14. The registration in the Transvaal of any contract entered into, either within or beyond the borders of the Colony, between an employer, or a Labour Agent, and a native, in support of which no agreement entered into at the time of recruitment, or certified copy thereof, has been presented to the Registering Officer may be refused until such agreement or certified copy has been produced. Such agreement shall be certified by a Magistrate or officer authorized to administer oaths or by an officer appointed for the purpose.

15. No Labour Agent shall exercise the rights granted to him under his licence within any labour district, or within the area of any municipality, or at any railway station, or on any railway; any person contravening this Regulation shall be liable on conviction to a fine not exceeding fifty pounds, or in default of payment to imprisonment with or without hard labour for a period not exceeding six months, or to both such fine and such imprisonment.

16. The last preceding Regulation shall not apply to

- (a) a person who may engage native labourers at any compound of the Government Native Labour Bureau; provided that such person shall hold a permit to engage native labourers in such compound signed by the Director of the Government Native Labour Bureau, or by an officer appointed by him thereto;
- (b) an employer who may engage for his own service natives who offer themselves for employment at his place of residence or business within labour areas, if such natives shall not have been solicited by such employer outside his place of residence or business.

17. (a) Every native recruited by a Labour Agent, or brought under a Conductor's Licence for work in the Transvaal, shall, upon arrival therein, be taken within twenty-four hours to the Government Native Labour Bureau, or to such other place used for the purpose of receiving such natives as may, upon application, be notified by the Director of the Government Native Labour Bureau, or by any officer appointed by him thereto, to such Labour Agent or Conductor. The natives may there be detained for a period not exceeding six days; provided, however, that the Director of the Government Native Labour Bureau, acting on the advice of the Medical Officer, may order the detention of any native for a longer period.

(b) All natives admitted to the Government Native Labour Bureau, or such place as aforesaid, may be medically examined and vaccinated, and upon every native so admitted there shall be paid by the Labour Agent or Conductor a fee which shall not exceed two shillings and sixpence in respect of each native, together with a payment to cover cost of subsistence, not exceeding one shilling per day or part of a day during which such native may be detained in such Government Native Labour Bureau or place as aforesaid.

(c) All such fees shall be payable, on demand, to the Director of the Government Native Labour Bureau, or to his duly appointed Deputy, and until full discharge shall have been granted to such Labour Agent or Conductor, such Labour Agent or Conductor shall not be permitted to remove from the Government Native Labour Bureau, or place in which for the time being they may be accommodated, any natives in respect of whom any such fee may be payable.

(d) It shall be lawful for the Director of the Government Native Labour Bureau to order the repatriation of any native who, in the opinion of the Medical Officer, is physically unfit to perform the work for which he was recruited, and the cost of such repatriation shall be borne by the Labour Agent by whom such native was recruited.

18. The last preceding Regulation shall not apply to natives recruited from Portuguese East Africa under licence from the Portuguese Government or to those recruited in any other territory north of latitude 22° S., and brought direct to the Transvaal from such territory; provided that such natives shall be taken to a place approved of in writing by the Director of the Government Native Labour Bureau, and shall be subjected to a medical examination by a Medical Officer, approved of in writing by the Director of the Government Native Labour Bureau, and that any such natives who fail to pass such medical examination may be repatriated or as provided in Sub-Section (d) of the last preceding Regulation.

19 (a) No Labour Agent shall be granted the sole and exclusive privilege of exercising the rights granted by a licence in any district or specified area.

(b) No concession or contract by any native Chief or Headman binding himself or his people to provide native labour shall be valid; and any person inducing or attempting to induce any native Chief or Headman so to bind himself shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred pounds, or in default of payment to imprisonment with or without hard labour for a period not exceeding three months, and shall further, if he hold a licence as a Labour Agent, be liable to have such licence cancelled.

20. Any person who shall by wilful misrepresentations of the terms or conditions of employment induce natives to leave this Colony or to engage themselves for work or labour within or beyond the borders thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred pounds, or in default of payment to imprisonment with or without hard labour for a period not exceeding three months, and if he hold a licence issued under these Regulations he shall be liable to have the same cancelled.

21. Any person who directly or indirectly either himself or by any other person by offer of higher wages or other privileges, or by any other means, causes, induces, or persuades or attempts to cause, or induce, or persuade, or aids or assists in causing, inducing or persuading, any native servant, by words or by other means to leave his employer's service in violation of any agreement of service, whether such agreement be in writing or not, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty pounds, or in default of payment to imprisonment with or without hard labour for any period not exceeding six weeks, or to both such fine and such imprisonment, and, if a Labour Agent, be liable to have his licence cancelled.

* *For the purposes of this section a native shall be considered to be in the service of the Labour Agent by whom he shall have been recruited until a binding contract of service has been executed between such native and a specified employer.*

22. Any person who shall conceal, employ, or retain, or aid or abet in concealing, employing, or retaining any native servant or apprentice who shall have deserted from the service of any master, or otherwise absconded or absented himself from such service, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty pounds, or in default of payment to imprisonment with or without hard labour for a period not exceeding six weeks, and if a Labour Agent, to cancellation of his licence.

23. If any licence holder ceases to be employed by the person whose name appears upon his licence, the licence shall thereupon cease and determine, unless assigned in manner provided by Regulation *nine*, and the fees already paid thereon shall not be recoverable. The licence shall thereupon be returned to the Minister for Native Affairs or any officer appointed by him thereto; provided that if the licence holder enters into a new engagement which complies with the requirements of Regulation *three*, the Minister for Native Affairs or any officer appointed by him thereto may, without any additional fee, validate the same in respect of the unexpired portion thereof.

24. Every employer of a Labour Agent shall, within seven days after such agent has left his service, notify the fact to the Minister for Native Affairs or to any officer appointed by him thereto.

25. Lists shall from time to time be published in the *Gazette* of licences issued under these Regulations to Labour Agents, as well as of licences which have been suspended or which have been determined or cancelled.

26. Every Labour Agent shall produce his licence whenever requested to do so by any Justice of the Peace, Police Officer or Constable, or Officer of the Native Affairs Department, Railway Traffic Manager or by any Station Master employed on any of the Railways in the Transvaal.

27. These Regulations shall apply to any duly authorized officer or agent of the Government who in the exercise of his duties may be lawfully engaged in collecting or conducting labourers for the purpose of work or labour for or on behalf of the Government; provided that no charge shall be payable under Section *eight* of these Regulations in respect of any licence issued to such authorized officer or agent.

* Words in italics added by Govt. Notice No. 334 of 1910.

28. Any person who shall contravene Regulation *one* or *two* or any condition of a licence issued thereunder or in any manner act in contravention of the terms of such licence, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one hundred pounds or in default of payment to imprisonment, with or without hard labour, for any period not exceeding three months.

Any person convicted of such offence shall have no claim against any natives recruited in contravention of these Regulations either as regards services or repayment of any expenses and such native shall be at liberty to engage himself to whomsoever he pleases.

29. Any person who shall fail forthwith to deliver up any licence issued under these Regulations which has been suspended or cancelled thereunder as well as all permits for runners or messengers still in force that may have been issued at the request of the holder of such suspended or cancelled licence, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding fifty pounds, or in default of payment, to imprisonment with or without hard labour, for a period not exceeding six weeks.

30. Any person who employs or causes to be employed as Labour Agent any person not in possession of a licence or any person licensed under these Regulations who is not registered as being in the bona fide service of such employer shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding one hundred pounds, or in default of payment to imprisonment, with or without hard labour, for a period not exceeding three months.

B.—COMPOUND OVERSEERS.

1. It shall not be lawful for any person to act as a Compound Overseer within the Transvaal unless he be in lawful possession of a licence issued by the Commissioner for Native Affairs, or by any officer appointed by him thereto.

2. In the event of the death, absence on leave or duty, or sickness of a Licensed Compound Overseer, his employer shall have the right to appoint a substitute, subject to the approval and confirmation of the Commissioner for Native Affairs, and such substitute shall act for such Overseer without taking out any licence for such period as the said Commissioner may approve, not exceeding the unexpired period of the licence held by such Overseer as aforesaid.

3. (1) Licences may be issued for a period of not more than one year on payment of an amount at the rate of £1 per month in advance.

(2) Applications, on printed form, must be made to the Commissioner for Native Affairs or any officer appointed by him to deal with such applications.

(3) Each application for a licence must be accompanied by a recommendation from the employer of the applicant.

4. The issue or renewal of a licence by the Commissioner for Native Affairs may be refused without any reason being given therefor.

5. The issue of a licence to any person shall not confer any right to its renewal.

6. (1) A Compound Overseer who has been convicted of any crime and sentenced to imprisonment by a Court of Law, or who has been convicted of any contravention of these or any other regulations relating to Native Labour or Native Passes, shall be liable to have his licence cancelled or suspended in addition to any other punishment to which he may have rendered himself liable.

(2) Any Compound Overseer who, in the opinion of the Commissioner for Native Affairs, has been guilty of any misconduct which renders it undesirable that he shall be allowed to continue to carry on the calling of Compound Overseer under the provisions of these Regulations, shall be liable to have his licence cancelled.

7. Every employer must at once inform the Commissioner for Native Affairs when any licensed Compound Overseer enters or leaves his service.

8. Lists shall from time to time be published in the *Gazette* of licences issued to Compound Overseers, which are current as well as licences newly granted, suspended, determined or cancelled.

9. Any person exercising the calling of a Compound Overseer without being provided with a licence for that purpose, shall for every such offence be liable on conviction to imprisonment, with or without hard labour, for any period not exceeding six months or to a penalty not exceeding one hundred pounds, or both.

10. Any person who shall fail or refuse forthwith to give or deliver up any licence which has been suspended or cancelled or which has expired by effluxion of time shall be liable to a penalty not exceeding fifty pounds, or in default of payment to imprisonment not exceeding six months.

11. Any person who knowingly or wilfully employs or causes to be employed as Compound Overseer any person not in possession of a licence, shall for every such offence be liable on conviction to imprisonment, with or without hard labour, for any period not exceeding six months or to a penalty not exceeding five hundred pounds, or both.

12. It shall be incumbent upon a licensed Compound Overseer

- (a) to see that there are no native labourers in the employ of the Company or person in whose service he is in or about the compound not in possession of Registered Labour Passports ;
- (b) to see that any transfers, new contracts or agreements or renewals, are recorded on the Passport ; and
- (c) to afford to Inspectors of Natives appointed by the Commissioner for Native Affairs all facilities for having access to the natives under his charge, and to all books and accounts relating to the wages of such natives.

Provided that any neglect of the Compound Overseer to comply with these Regulations shall not absolve the employer from the obligations imposed on him under the provisions of the Pass Regulations in force in Labour Districts.

*13. *These Regulations shall apply to any duly authorized officer or agent of the Government who in the exercise of his duties may be lawfully in charge of fifty or more natives for or on behalf of the Government, provided that no charge shall be payable under Section three of these Regulations in respect of any licence issued to such authorized officer or agent.*

* Rule 13 added by Govt. Notice No. 1026 of 1908.

1902.

PROCLAMATION No. 5 OF 1902.*

Proclamation
(Trans.) No. 5
of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 23rd January, 1902.)

WHEREAS it is desirable to make provision for the acquisition of lands by the Governor of this Colony for public purposes and for the compensation to be made for the same;

Preamble.

Now, therefore, by virtue of the authority in me vested, I do hereby proclaim, declare, and make known as follows:—

1. The following words and expressions in this Proclamation shall have the several meanings hereby assigned to them, unless there be anything in the context repugnant to such construction, that is to say:—

Definitions.

“Governor” shall mean the officer for the time being administering the government of the Transvaal;

“land” shall extend to all land held under any tenure or under lease or stand licence;

“district” shall mean the area under the jurisdiction of a court of resident magistrate;

“resident magistrate” shall mean resident magistrate or acting resident magistrate exercising jurisdiction in the district in which the matter requiring the cognizance of any such resident magistrate or acting resident magistrate shall arise and who shall not be interested in the matter.

Where under the provisions of this Proclamation, any notice shall be required to be given to the owner of any land, or where any act shall be authorized or required to be done with the consent of any such owner, the word “owner” shall mean any person, public company or corporation, who, under the provisions of this Proclamation, would be enabled to sell and transfer such land.

The words “owner” or “parties” shall mean and include any person or corporation who, under the provisions of this Proclamation or any other law, would be enabled to sell and transfer land; it shall also include the holder of a stand licence.

Until the establishment of the Supreme Court of this Colony the Special Criminal Court at Johannesburg and the Special Criminal Court at Pretoria shall have each, within the limits of its jurisdiction, all the powers and jurisdiction vested under this Proclamation in the Supreme Court or in any judge thereof.

* As to expropriation for railway purposes see Ord. No. 20, 1903; expropriation by municipalities see Ord. No. 64, 1903, and as to arbitration see Ord. No. 24, 1904, sec. 30.

Compulsory expropriation by Governor for public purposes.

2. The Governor may, for public purposes, acquire by voluntary or compulsory sale any land the property of private persons situate within this Colony.

The expression "public purposes"† shall include

(1) the construction and maintenance of works for the defence of this Colony and the erection of buildings for the use of any police or defence force therein;

(2)‡ the construction and maintenance of tramways, telegraphs, telephones, public roads, streets, squares, cemeteries, markets, irrigation works, watercourses, reservoirs, public buildings, and native locations.

Purchase of land for public purposes by agreement.

3. Subject to the provisions of this Proclamation the Governor acting through the secretary to the Public Works Department, hereinafter called the "secretary", may agree with the owner of any land required for public purposes for the absolute purchase for a consideration in money of any such land or such portion thereof as he shall think proper.

Power to persons with limited interests and under disabilities to transfer.

4. It shall be lawful for all corporations, fiduciary heirs or fidei-commissary heirs, women married without community of goods, guardians, curators or trustees under marriage settlements or holding lands for native purposes, and all other trustees, executors, and administrators, and all persons entitled to a life interest in any lands, whether subject to a lease or not, to sell, transfer and convey the same and all their right, title, interest, claim, and demand therein to the Governor and to enter into all necessary agreements for that purpose.

Determination of amount of purchase money and compensation by arbitration.

5. The purchase money to be paid for any lands to be purchased or taken from any party under any disability or incapacity and not having power to sell and transfer any lands except under the provisions of this Proclamation, and the compensation to be paid for the taking of any such lands, and for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by arbitration, be less than shall be determined by the valuation of two competent appraisers, one of whom shall be nominated by the secretary and the other by the other party, and if they cannot agree then by such third person as the Supreme Court shall, upon application of either party after due notice to the other for that purpose, nominate, and all such purchase money or compensation shall be deposited with the Orphan Master for the benefit of the parties interested.

Notice to owners.

6. When the Governor shall require to purchase or take any lands for public purposes he shall by the secretary give notice thereof to the owners thereof and by such notice shall demand the particulars of their interest in such land and of the claims made by them in respect thereof, and every such notice shall state the particulars of the land required and that the secretary is willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the

† See Act No. 25 of 1907, sec. 88 (1) (as to schools).

‡ As amended by Ord. No. 20 of 1903, sec. 1 (2).

damage that may be sustained by them by reason of such purchase or the carrying out of the purposes for which the land is required.

7. The Governor shall not by virtue of the power to purchase land for public purposes purchase more than the quantity prescribed in such notice as aforesaid from any party under legal disability, or who would not be able to sell and transfer such lands except under the powers of this Proclamation, and if the Governor purchases the said quantity of land from any party under such legal disability and afterwards sells the whole or any part thereof, it shall not be lawful for any such party being under legal disability again to sell to the Governor any other lands in lieu of the lands so sold or disposed of by him.

Limitation of quantity purchased from persons under disability, to that prescribed by the notice.

8. All notices required to be served by the secretary upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, and in case any such parties shall be absent from the Colony all such notices shall also be left with the occupier of such land or if there be no occupier shall be published in the *Government Gazette* of the Colony and left with the Registrar of Deeds.

Service of notices to treat.

*9. If for sixty days after the service of such notice any such party shall fail to state the particulars of his claim in respect of any such land or to treat with the secretary in respect thereof, or if such party and the secretary shall not agree as to the amount of compensation to be paid for the interest in such land belonging to such party or which he is by this Proclamation enabled to sell, or for any damage that may be sustained by him by reason of the carrying out of the purposes for which such land is required, the amount of such compensation shall be settled in manner hereinafter provided for settling cases of disputed compensation.

Settlement of amount of compensation by arbitration after expiry of notice.

10. If no agreement be come to between the secretary and the owner of any land or of any interest in such land taken or required for or injuriously affected by the carrying out of the purposes for which such land is required as to the value of such land or of any interest therein or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed one hundred pounds, the same shall be settled by the resident magistrate of the district in which such lands shall be situate.

Where amount does not exceed £100, to be settled by resident magistrate.

11. If the compensation claimed or offered in any such case shall exceed one hundred pounds, and if the party or parties claiming compensation desire to have the same settled by arbitration and signify such desire by notice in writing to the secretary stating in such notice the nature of the interest in respect of which such party or parties claim compensation and the amount of the compensation so claimed, the same shall be so settled accordingly, but unless the party claiming

Where amount exceeds £100 and arbitrators have not agreed, or no final award made, to be settled by action in Supreme Court.

* This and the following arbitration provisions made applicable to expropriations by the railway administration and by municipalities, with certain exceptions. See Ord. No. 20 of 1903, secs. 9 and 10; Ord. No. 64 of 1903, sec. 9.

compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for two months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by action to be instituted in the Supreme Court.

Summoning
of parties by
resident
magistrate
and hearing
and deter-
mining of
question.

12. It shall be lawful for the resident magistrate of the district in which any such lands may be situated, upon the application of either party with respect to any question of disputed compensation by this Proclamation required to be settled by such resident magistrate, to summon the other party to appear before him at a time and place to be named in the summons, and upon the appearance of such parties or in the absence of any of them upon proof of due service of the summons, it shall be lawful for such magistrate to hear and determine such question and for that purpose to examine such parties or any of them and their witnesses upon oath, and the costs of every such inquiry shall be in the discretion of such magistrate and he shall settle the amount thereof.

Appointment
of arbitrators.

13. When any question of disputed compensation by this Proclamation authorised or required to be settled by arbitration shall have arisen, then, unless both parties shall concur in the appointment of an arbitrator, each party on the request of the other party shall nominate and appoint an arbitrator to whom such dispute shall be referred, and every appointment of an arbitrator shall be made on the part of the secretary under his hand and on the part of any other party under the hand of such party or his agent thereunto lawfully authorised, or if such party be a corporate body under the common seal of such corporate body, and such appointment shall be delivered to the arbitrator and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made, and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation, and if for the space of fourteen days after any such dispute shall have arisen and after a request in writing in which shall be stated the matter so required to be referred to arbitration shall have been served by the one party on the other party to appoint an arbitrator such last-mentioned party fail to appoint an arbitrator, then upon such failure the party making the request and having himself appointed an arbitrator may appoint such arbitrator to act on behalf of both parties and such arbitrator may proceed to hear and determine the matters which shall be in dispute and in such case the award or determination of such single arbitrator shall be final.

Where
arbitrator dies
or becomes
incapable.

14. If before the matters so referred shall be determined any arbitrator appointed by either party die or become incapable the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if for the space of fourteen days after

notice in writing from the other party for that purpose he fail to do so, the remaining or other arbitrator may proceed as sole arbitrator. And every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid, and for all intents and purposes shall be considered as if he were originally nominated as such arbitrator.

15. When more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ or which shall be referred to him under the provisions of this Proclamation, and if such umpire shall die or become incapable to act they shall forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire on the matter so referred shall be final.

Appointment of umpire by arbitrators.

16. If in either of the cases aforesaid the said arbitrators shall refuse or shall for fourteen days after request of either party to such arbitration neglect to appoint an umpire, the Supreme Court shall, on the application of either party, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ or which shall be referred to him under this Proclamation, shall be final.

On refusal or neglect of arbitrators to appoint an umpire, Supreme Court to do so.

17. If when a single arbitrator shall have been appointed such arbitrator shall die or become incapable to act before he shall have made his award the matters referred to him shall be determined by arbitration under the provisions of this Proclamation in the same manner as if such arbitrator had not been appointed.

Death of single arbitrator.

18. If when more than one arbitrator shall have been appointed, either of the arbitrators refuse, or for fourteen days neglect to act, the other arbitrator may proceed as sole arbitrator, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

Refusal or neglect of one arbitrator to act.

19. If where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

Determination by umpire.

20. The said arbitrators or their umpire may call for the production of any document in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

Production of documents.

Declarations
of arbitrator
and umpire.

21. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall, in the presence of a justice of the peace, make and subscribe the following declaration, that is to say:—

“ I, A.B., do solemnly and sincerely declare that I will faithfully and honestly and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of Proclamation No. 5 of 1902.

“(Signed) A.B.

“ Made and subscribed in the presence of . . . ”

Penalty for
false
declaration.

And such declaration shall be annexed to the award when made, and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto, he shall be guilty of and be liable to be prosecuted for the crime of perjury, and on conviction shall suffer all the pains and penalties imposed by law for the commission of such crime.

Costs of
arbitration.

22. All the costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the Colonial Treasury, unless the arbitrators shall award the same or a less sum than shall have been offered by the secretary, in which case each party shall bear his own costs incident to the arbitration, and the cost of the arbitrators shall be borne by the parties in equal proportions.

Delivery of
award to
Secretary of
Public Works.

23. The arbitrators shall deliver their award in writing to the secretary, and the said secretary shall retain the same and shall forthwith furnish a copy thereof to the other party to the arbitration, and shall at all times on demand produce the said award and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Submission
may be made
a rule of
Court.

24. The submission to any such arbitration may be made a rule of the Supreme Court on the application of either of the parties. No award made with respect to any question referred to arbitration under the provisions of this Proclamation shall be set aside for irregularity or error in matter of form. Twenty days' notice shall be given by the secretary to the other parties of the time when and the place where it is intended to hold the arbitration.

Notice before
legal
proceedings
taken by
Secretary of
Public Works.

25. Before the secretary shall commence legal proceedings in any court for settling any case of disputed compensation he shall give not less than twenty days' notice to the other party of his intention to commence such legal proceedings, and in such notice the secretary shall state what sum of money he is willing to give for the interest in such lands sought to be purchased by him from such party, and for the damage to be sustained by such party by carrying out the purposes for which such lands are required.

Penalty for
disobedience
to summons.

26. If any person duly summoned to give evidence before arbitrators, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons without sufficient cause, or if any person, whether summoned or not, who shall appear as a

witness refuse to be examined on oath touching the subject matter in question, every person so offending shall for each offence forfeit to the party aggrieved a sum not exceeding ten pounds.

27. If any costs shall be payable by the owner of the land or any interest therein, the same may be deducted and retained by the secretary out of any money awarded to such owner or determined by the valuation of a surveyor under the provisions hereinafter contained, and the payment or deposit of the remainder (if any) of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined the excess shall be recoverable by execution.

Deduction of costs payable by owner from amount awarded.

28. The purchase money or compensation to be paid for any lands to be purchased or taken by the Governor from any party who by reason of absence from the Colony is prevented from treating or who cannot after diligent inquiry be found, and the compensation to be paid for any permanent injury to such land, shall be such as shall be determined by the valuation of such practical land surveyor or auctioneer as the Supreme Court shall nominate for that purpose.

Determination of amount by person appointed by Court, in absence of party from the Colony.

29. The Supreme Court shall upon application by the Secretary and upon such proof as shall be satisfactory to it that any such party is by reason of absence from the Colony prevented from treating or cannot after diligent inquiry be found, or if any such party fail to enter any appearance in any suit instituted in such Supreme Court after due notice to him for that purpose, nominate a competent land surveyor or auctioneer for determining such compensation and such surveyor or auctioneer shall determine the same accordingly and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

30. Before such surveyor or auctioneer shall enter upon the duty of making such valuation as aforesaid he shall make and subscribe in the presence of a justice of the peace the declaration following at the foot of such nomination, that is to say:—

Declaration by person so appointed.

“I, A.B., do solemnly and sincerely declare that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.

“(Signed) A.B.”

“Made and subscribed in the presence of _____”

And if any surveyor or auctioneer shall corruptly make such declaration or having made such declaration shall wilfully act contrary thereto he shall be guilty of and be liable to be prosecuted for the crime of perjury, and on conviction shall suffer all the pains and penalties imposed by law for the commission of such crime. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor or auctioneer and shall be preserved together therewith by the secretary, and he shall at all times produce the said valuation and other documents on demand to the owner

Penalty for corruptly acting contrary to declaration.

of the lands comprised in such valuation and to all other parties interested therein. All the expenses of and incident to every such valuation shall be borne by the Colonial Treasury.

Damage sustained by severance to be considered in estimating compensation.

31. In estimating the purchase money or compensation to be paid by the Governor in any of the cases aforesaid, regard shall be had by the Supreme Court or magistrate's court having jurisdiction, arbitrator, or surveyor, or auctioneer, as the case may be, not only to the value of the land to be purchased or taken by the Governor, but also to the damage (if any) to be sustained by the owner of the lands by reason of severing the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers under this Proclamation.

If dissatisfied with the valuation owner may require the question of compensation to be submitted to arbitration.

32. When the compensation payable in respect of any lands or any interest therein shall have been ascertained by the valuation of a surveyor or auctioneer, and deposited with the Orphan Master under the provisions herein contained, by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found, or was absent from the Colony, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the court for payment or investment of the moneys so deposited under the provisions herein contained, by notice in writing to the secretary to require the question of such compensation to be submitted to arbitration; and thereupon the same shall be submitted accordingly in the same manner as in other cases of disputed compensation hereinbefore authorised or required to be submitted to arbitration.

Questions for the arbitrators.

33. The question to be submitted to the arbitrators in the case last aforesaid shall be whether the sum so deposited as aforesaid by the secretary was a sufficient sum, or whether any and what further sum ought to be paid or deposited by him.

Payment of award.

34. If the arbitrators shall award that a further sum ought to be paid or deposited by the secretary, the secretary shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award.

When costs to be paid by the Government.

35. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators; but if the arbitrators shall determine that a further sum ought to be paid or deposited by the secretary all the costs of and incident to the arbitration shall be borne by the secretary.

Transfer by owner on tender of purchase money.

36. Upon tender of payment to the owner, or deposit with the Orphan Master of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the Governor, the owner of such lands (including in such term all parties by this Proclamation enabled to sell or convey lands) shall when required to do so by the secretary duly transfer such lands to such person as the Governor may direct; and in default thereof it shall be

Remedy in default of transfer.

lawful for the Supreme Court, on the application of the secretary, to order the Registrar of Deeds to transfer the same, and he is hereby authorised to transfer the same accordingly; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the secretary such agreement shall have been come to, or as between whom and the secretary such purchase money or compensation shall have been determined by a competent court, or by arbitrators, or by the surveyor or auctioneer appointed by the Supreme Court as hereinbefore provided, and shall have been deposited as aforesaid, shall vest absolutely in the Governor.

37. If the owner of any such lands purchased or taken by the Governor, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof refuse to accept the same, or neglect or fail to transfer such lands or the interest therein claimed by him; or if he refuse to transfer or release such land as directed by the secretary, or if any such owner be absent from the Colony or cannot after diligent inquiry be found, or fail to appear before the Supreme Court, it shall be lawful for the secretary to deposit the purchase money or compensation payable in respect of such lands, or any interest therein, with the Orphan Master to the credit of the parties interested in such lands (describing them as far as the secretary can do), subject to the control and disposition of the said court.

38. In all cases of money deposited with the Orphan Master under the provisions of this Proclamation, except where such moneys shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to transfer or release the lands in respect whereof the same shall be payable, it shall be lawful for the court to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid out of the Colonial Treasury, that is to say: the costs of the purchase or taking of the lands or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for and the costs of the investment of such moneys, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the interest of the securities or rent of the property upon which such moneys shall be invested, and for the payment out of court of the principal of such moneys or of the securities whereon the same shall be invested, and of all proceedings relating thereto except such as are occasioned by litigation between adverse claimants; provided always that the costs of one application only for investment in land shall be allowed, unless it shall appear to the court that it is for the benefit of the parties interested in the said moneys that the same shall be invested in the purchase of lands in different sums; in which case it shall be lawful for the court if it thinks fit to order the costs of any such investments to be paid out of the Colonial Treasury.

Deposit of
purchase
money with
Orphan
Master.

Costs to be
allowed by
Court.

Power to
Government
to enter and
take
possession.

39. It shall be lawful for the secretary after the expiration of sixty days mentioned in section *nine* to enter upon, take possession of and use for the purposes authorised by this Proclamation any such land before proceedings have been taken to settle the amount of compensation to be paid for it, leaving all questions as to such compensation to be settled afterwards in manner provided by this Proclamation.

Transfer of
portion of
encumbered
land released
from
encumbrance.

40. In every case in which any land is subject to a mortgage and the Governor requires only a portion of the said land, the mortgagee of such land may consent that the portion of land so required by the Governor be transferred to him released from such mortgage, and the consent to the transfer and release of such portion of any lands so mortgaged shall in no way affect the rights of the mortgagee to the remainder of the land, and the mortgage bond shall remain and be in full force and effect for the sum due thereon and interest as to the remainder of the lands, as if no consent to transfer had been given.

Rights of
mortgagee.

41. In any case in which any land is subject to a mortgage and the Governor requires only a portion of the said land, and the mortgagee of such land does not consent to the transfer thereof released from such mortgage, and if the portion so required be of less value than the amount of the mortgage bond with interest thereon, and the mortgagee shall not consider the remaining part of such land a sufficient security for the payment of the said bond, the mortgagee may insist and demand that the value of and compensation to be given for that portion of the land so required by the Governor may be settled by agreement between him and the Governor; and if the parties aforesaid disagree respecting the amount of such value or compensation, the same shall be determined as in all other cases of disputed compensation, and the amount of such value or compensation being so agreed upon or determined shall be paid by the Governor to the mortgagee in satisfaction of his mortgage debt, in so far as the same may extend, and a memorandum of what shall have been so paid shall be written or endorsed on the mortgage bond, and upon the official copy thereof filed of record in the Deeds or other Registration Office.

Application of
compensation
towards
payment of
mortgage
debt.

42. In any case in which all land comprised in and affected by a mortgage bond is required to be taken by the Governor, then the amount of compensation required to be paid by the Governor for the taking of such land shall be applied as far as the same is required towards the payment of the mortgage debt, and all interest due thereon and the balance of such compensation money shall be paid over to the owner of the land, and in any case where the amount of the compensation offered by the Governor to be paid for such land is not equal to the amount due on such mortgage bond, then the mortgagee shall for the purposes of determining the same, as in all other cases of disputed compensation, be considered as the owner, and all the powers by this Proclamation given to owners in cases of disputed compensation are

hereby conferred on the mortgagee; provided that where the compensation when so agreed upon or determined exceeds the amount due on the mortgage bond, then the mortgagee must pay over the surplus to the owner; provided always that it may be lawful for the owner at any time before the compensation is agreed upon or determined to redeem the mortgage bond, and then the same proceedings shall be had as in all other cases of disputed compensation.

43. In any case in which any mortgagee shall be a minor or incapacitated from acting by lunacy, absence from the Colony, or from any other cause, then in every such case the same proceedings shall be had for the purpose of determining the purchase money or compensation of any land or portions of land mortgaged to minors or incapacitated persons as are by this Proclamation required to be had when the owners may be absent or incapacitated, and the amount when so ascertained, or so much thereof as may be required for the satisfaction of the mortgage bond, shall be deposited with the Orphan Master, and thereupon the Supreme Court or any judge thereof may order the Registrar of Deeds to transfer the same freed and discharged from such mortgage.

Absence or incapacity of mortgagee.

44. If any land shall be comprised in a lease for a term of years unexpired, part only of which land shall be required for the purposes of this Proclamation, the rent payable in respect of the lands comprised shall be apportioned between the lands so required and the residue of such lands, and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part and the secretary on the other part, and if such apportionment be not settled by agreement between the parties such apportionment shall be settled by the resident magistrate of the district in which such lands are situate, and after such apportionment the lessee of such lands shall as to all future accruing rent be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of this Proclamation, and as to the lands not so required, and as against the lessee the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease, and all the covenants, conditions and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of this Proclamation, in the same manner as they would have done in case such part only of the land had been included in the lease.

Apportionment of rent in case of unexpired lease of land.

45. Every such lessee as last aforesaid shall be entitled to receive from the Governor compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works for which such land is required.

Compensation to lessee.

Compensation
to lessee for a
short term.

46. If any lands shall be in the possession of any person having no greater interest therein than as tenant for a year, or from year to year, and if such person be required to give up possession of any land so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of the unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain; or if part only of such land be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same, and the amount of such compensation shall be determined by the resident magistrate having jurisdiction in case the parties differ about the same.

Secretary
may require
production of
lease.

47. If any party having a greater interest than a tenant at will claim compensation in respect of any unexpired term, or interest under any lease or grant of any such lands, the secretary may require such party to produce the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power, and if after demand made in writing by the secretary such lease or grant, or such best evidence thereof be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Compensation
to owners and
occupiers.

48. In exercising the power given by this Proclamation, the Governor shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of this Proclamation, or injuriously affected by the construction of any works for the purposes of this Proclamation, full compensation for all damages sustained by such owners, occupiers and other parties by reason of the exercise as regards such lands of the powers by this Proclamation vested in the Governor.

Title.

49. This Proclamation may be cited for all purposes as the Expropriation of Lands and Arbitration Clauses Proclamation, 1902.

By Ord 9 of 1912 The whole except sub-section 4 of section 27 Act

* PROCLAMATION No. 7 of 1902.

Sub-section 4 repealed 21 of 1932
Proclamation (Trans.) No. 7 of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 16th January, 1902.)

WHEREAS it is desirable to make temporary provision for the municipal government of Pretoria: Preamble.

Now, therefore, by virtue of the authority vested in me, I do hereby declare, proclaim, and make known as follows:—

1. The expression "Governor" in this Proclamation shall be taken to mean the officer for the time being administering the government of this Colony. Definition.

2. From and after the taking effect of this Proclamation, the town of Pretoria, including all the lands and property within the limits of the said town as defined in Government Notice No. 23 of 1900, signed by Major-General Maxwell, Military Governor, is hereby constituted the Municipality of Pretoria. Boundaries of the municipality.

The boundaries of the said municipality are more clearly defined in a map to be deposited in the municipal offices at Pretoria, and a duplicate thereof in the office of the Secretary to the Transvaal Administration.

†3. There shall be for the government of the said municipality a council, which shall consist of the chairman of the municipality and not more than fifteen or less than nine councillors to be appointed by the Governor and to hold office during pleasure. Constitution of council.

‡ The chairman of the said municipality shall be appointed by the Governor. Chairman.

4. It shall be lawful for the Governor to appoint a town clerk, treasurer, and town engineer for the said municipality; and the council may, subject to the approval of the Governor, appoint such other fit and proper officers not being members of the council as they shall think necessary, for enabling them to carry into execution the provisions of this Proclamation, and may pay all the officers appointed under this section such salaries as they shall deem reasonable from and out of the funds of the municipality, and as shall be approved of by the Governor; and unless it shall be otherwise stipulated in the contract of service, the council may remove all such officers appointed by them upon a notice of not less than one month, or in case of misconduct without any notice. Officers.

* See also Ord. No. 31 of 1902; 38 of 1903, sec. 129; 58 of 1903, sec. 63; 50 of 1904; 34 of 1905 (water supply); I (Priv.) of 1906; Acts Nos. 32 of 1907, 23 of 1909, and 12 of 1910.

† The members of council appointed under this section having resigned, the powers and duties of the town council under this Proclamation and Ord. No. 31 of 1902 were, by Ord. No. 26 of 1903, vested in a temporary commission appointed under the last-named Ordinance until the election of a council under Ord. No. 38 of 1903. Such council was duly elected in Nov., 1903.

‡ See now Act No. 23 of 1909, sec. 10, as to election of a mayor and deputy mayor.

MEETINGS.

Ordinary meetings.

5. An ordinary meeting of the council shall take place at least once in every week and all meetings of the council shall be open to the public.

Quorum.

6. Save where it is otherwise specially provided in this Proclamation, all acts, matters, or things hereby authorized or required to be done by the council, and all questions that may come before it, shall be done and decided by the majority of councillors who shall be present at any meeting at which not less than *one-half*† of the members of the council shall attend.

Absence of chairman.

7. At every meeting of the council the chairman of the municipality, if present, shall preside, and in case of his absence the councillors present shall elect a chairman from among themselves, who shall have the power and authority of the chairman of the municipality until he is again present and acting, or until another chairman is appointed.

Casting vote of chairman.

8. In case of equality of votes, the chairman of the meeting shall have a second or casting vote.

Minutes of proceedings.

9. Minutes of the proceedings of every meeting of the council shall be regularly entered in a book to be kept for that purpose, and it shall be read at the next succeeding meeting, and signed by the person presiding thereat. Such book shall at all reasonable times be open to the inspection of any of the councillors or ratepayers, and of any creditor of the municipality, and any such person may at all reasonable times, on payment of a fee of one shilling per folio, obtain any copy or any extract therefrom.

Adjournment of meeting.

10. The councillors present at any meeting may from time to time adjourn such meeting; and if at any meeting of the council a sufficient number of members be not present to exercise the powers vested in the council, the councillors present shall adjourn the meeting.

Special meetings.

11. The chairman of the municipality or any three councillors may at any time call a special meeting of the council, provided that he or they cause a notice of the time and place of such intended meeting specifying the object thereof, and signed by him or them or by the town clerk, to be served on every councillor either personally or by leaving the same at his usual place of abode twenty-four hours at least before such meeting.

Pecuniary interest of councillor.

12. No councillor shall vote or take part in the discussion of any matter in or before the council in which he has directly or indirectly any pecuniary interest. Every councillor contravening the provisions of this section shall on conviction vacate his seat, and be liable to a penalty not exceeding fifty pounds.

Committees.

13. It shall be lawful for the council to appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of members as to the council may seem fit for any purpose which in the judgment of the council would be better managed

† As amended by Ord. No. 31 of 1902, sec. 1.

by means of a committee, and to fix the quorum of any such committee, providing always that the proceedings of the committee shall be regularly entered in a minute book to be kept for that purpose and reported to the council. Each committee shall elect its own chairman and the chairman of the municipality shall be *ex officio* a member of all such committees.

14. The council shall from time to time appoint a finance committee for regulating and controlling the finance of the municipality; and an order for the payment of a sum out of the funds of the municipality shall not be made by the treasurer of the municipality, except in pursuance of a resolution of the council passed on the recommendation of the finance committee, and no cost, debt, or liability exceeding fifty pounds shall be incurred, except upon a resolution of the council passed on an estimate submitted by the finance committee.

Finance committee.

15. Every committee appointed by the council may meet from time to time and may adjourn from place to place as they may think proper, and no business shall be transacted at any meeting of the committee unless the quorum of members (if any) fixed by the council, and if no quorum be fixed two members, be present, and at all meetings of the committee if the chairman of the committee be not present, one of the members shall be appointed chairman, and all questions shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of the committee.

Adjournment and quorum of committees.

ACCOUNTS AND AUDIT.

16. The council shall cause proper books to be provided and true and regular accounts to be entered therein of all sums of money received and paid on account of and for the municipality, and of the several purposes for which such sums of money have been received and paid, which books shall at all reasonable times be open to the inspection of any councillor or ratepayer or creditor of the municipality, and any such person may take copies of or extract from the said books on payment of a fee of one shilling for each folio or part thereof.

Books of accounts to be kept and open to inspection.

17. The Governor may appoint one or more persons to examine once in every month the accounts of the municipality, and the council shall by the town clerk produce and lay before the person so appointed all books and accounts of the municipality with all vouchers in support of the same and all books, papers and writings in their power relating thereto; provided that seven days' notice in writing shall be given to the town clerk of any such intended examination.

Monthly audit.

18. For the purpose of any audit under the provisions of the last preceding section it shall be lawful for the auditor to hear, receive and examine evidence upon oath (which oath such auditor is hereby empowered to administer) and by summons under his hand to require such persons as he may

Powers of auditor.

think fit to appear personally before him, at a time and place to be stated in such summons, and to produce all such books and papers as may be necessary for such audit.

Any person so required who shall without lawful excuse refuse to attend in obedience to such summons, or who having appeared shall refuse to be examined on oath or affirmation or to take such oath or affirmation, or having taken such oath or affirmation to answer such questions as shall be put to him, shall be liable to a penalty not exceeding twenty pounds for every such act or offence, and in default of payment to be imprisoned with or without hard labour for any period not exceeding three months, unless such fine be sooner paid; provided that no conviction under this section shall be taken to exempt the person convicted from liability to do or perform the act, matter or thing required to be done or performed by him, or from being successively convicted and punished for every distinct commission of the same act or offence.

BYE-LAWS OR REGULATIONS.

*19. The council may from time to time make, alter, and revoke bye-laws or regulations for all or any of the following purposes:—

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| Powers of council to make bye-laws. | |
| Proceedings. | (1) For regulating the proceedings of the council and the duties of their officers and servants and preserving order at council meetings. |
| Fire prevention, etc. | (2) For preventing and extinguishing fires and compensating the owners of buildings removed to prevent the spread of fires. |
| Markets. | (3) For establishing and regulating public markets and market dues, and regulating public sales. |
| Nuisances. | (4) For suppressing nuisances, houses of ill-fame and gaming-houses. |
| Offensive trades. | (5) For restraining noisome and offensive trades, and compelling residents to keep their premises free from offensive or unwholesome matters. |
| Water supply. | (6) For regulating the supply and distribution of any water under the control or management of the council and the rates to be paid for such supply by the inhabitants of the municipality. |
| Sewerage and drainage. | (7) For regulating sewerage or drainage and for compelling the connection at the owner's expense of private drains with public drains, sewers, or pipes and for regulating the construction by the council at the owner's expense of all house drains, in so far as they connect with and extend from the main sewer to the kerb of the street. |
| Lighting. | (8) For regulating lighting with gas, electricity, or otherwise. |
| Disorderly house. | (9) For prohibiting brothels and for preserving public decency. |
| Infectious disease. | (10) For preventing the spread of contagious or infectious diseases and for preserving the public health. |

* As to bye-laws or regulations see preface.

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| (11) For regulating, supervising, and licensing porters, public carriers, carters, cabs, jinrickshas, and vehicles plying for hire, and the drivers thereof, and for fixing the amount of licence fees to be paid, the charges and fares to be made, and the number of passengers to be carried. | Licensing of cabs, etc. |
| (12) For regulating and restricting the use of bicycles, tricycles, motor cars, and velocipedes within the municipality. | Regulation of cycles. |
| (13) For regulating the killing of cattle and other animals and sale of butchers' meat, and the establishment and locality of slaughter-houses and meat shops, and their maintenance in a cleanly and proper state. | Slaughter-houses. |
| (14) For regulating the removal of night-soil, stable litter, filth and refuse from private premises and from all streets, roads and public places and for fixing the charges for such removal. | Night-soil. |
| (15) For regulating water-closets, earth-closets, privies, ashpits and cesspools in connection with buildings, and to prohibit the use of such of them as the council consider ought not to be allowed to continue. | Privies, etc. |
| (16) For regulating the closing of buildings or parts of buildings unfit for human habitations and the prohibition of their use for such habitation. | Unhealthy dwellings. |
| (17) For preventing the dangerous use of gunpowder, fireworks, and other combustibles, and for regulating the storage or removal of petroleum, gunpowder, dynamite, or other explosive or inflammable material. | Explosives. |
| (18) For imposing a tax upon the keeping of dogs, and for providing for the seizure, sale and destruction of ownerless dogs and of those in respect of which the tax has not been paid. | Dogs. |
| (19) For preventing the pollution of water. | Water pollution. |
| (20) For establishing and maintaining cemeteries. | Cemeteries. |
| (21) For planting and preserving trees and shrubs. | Trees, etc. |
| (22) For regulating the width, curbing, paving, guttering, gravelling, cleansing and protection of roads and streets. | Paving, etc., of streets. |
| (23) For granting licences or permits for the making of bricks, or for digging or removing clay or gravel, or for quarrying stone, or for cutting firewood, brushwood or grass upon municipal lands, and to prescribe the fees (if any) to be paid for the same. | Brickfields and quarries. |
| (24) To provide for the due and proper care of the common pasture and other municipal lands, and therein to specify and regulate the quantity and kinds of live stock which each inhabitant shall be allowed to keep and depasture on the said lands. | Town common and municipal lands. |
| (25) For establishing, maintaining and regulating public libraries, museums, botanical gardens, parks, open spaces, public baths, wash-houses, and locations for aboriginal natives, and for establishing and licensing public places of recreation. | Public libraries and museums. |

- Public processions. (26) For regulating and controlling public processions and gatherings in public places.
- Abatement of nuisances. (27) For the abatement of nuisances and causing vehicles to be kept under proper control, for preventing and removing obstructions in the streets, roads, public thoroughfares, squares, foot pavements and sidewalks of the town, for dealing with diseased animals and the burial of dead animals, and the driving of live stock through the streets, and as to live stock found straying in the streets.
- Street obstruction. (28) For preventing any person from carrying any board, basket or burden so as to obstruct or incommode passengers on any sidewalk or foot pavement, and for preventing the wheeling of perambulators, wheelbarrows, and similar vehicles on any sidewalk or foot pavement, except for the purpose of crossing the same to or from any house or building.
- (29) For preventing persons from congregating with others and thus causing an obstruction in any footpath, foot pavement, sidewalk or crossing, and for preventing the flying of kites, the use of catapults, and playing of games in public streets, thoroughfares and open spaces, and for preventing the obstruction of public streets, thoroughfares and open spaces.
- Projections from buildings. (30) For regulating the lines and level and architecture of buildings and the removal, alteration and prevention of projections in front of buildings.
- Unightly buildings. (31) For enabling the council to prevent the alteration, erection or use of buildings, the class or character of which are either in themselves or from the circumstances or nature of the locality in which they are placed a disfigurement to the town or an annoyance to the inhabitants thereof, also for preventing the owners of property which have been sub-divided and sold in building lots from closing any roads or streets shown upon any plan which has been approved of by the council.
- Dangerous structures. (32) For compelling the pulling down, removing, or rendering safe all buildings, walls, bridges, earthworks, and stoeps of an unsafe or dangerous character, or which has been allowed to fall into a dilapidated or ruinous condition, and for doing so at the cost of the owner.
- Inspection of buildings and hoardings. (33) For regulating the inspection of buildings and structures by the council and its officers and for regulating the erection of scaffolding and hoarding during the construction or alteration of any building.
- Pounds. (34) For establishing one or more pounds within the municipality and for providing for the collection of pound fees and the management of pounds, the appointment of poundmasters, and for making such pound regulations as may seem necessary or expedient.
- Good rule, etc. (35) Generally for maintaining the good rule and government of the municipality.

*(36) For maintaining and regulating any service of motor omnibuses or other vehicles drawn or propelled by animal, mechanical, or electrical power which may be established by the council.

But no such bye-law or regulation shall be contrary to the provisions of this Proclamation.

20. No bye-law or regulation shall be made or amended by the council until a copy of such proposed bye-law or amendment be deposited at the office of the council for inspection by any person at all reasonable times and a notice be published in the *Gazette* seven days prior to the meeting of the council held for the purpose of making such bye-law or amendment, setting forth the general purport of the proposed bye-law or regulation and amendment and stating that a copy is open for inspection as aforesaid.

Making an amendment of bye-laws and notice thereof.

21. After any bye-law or regulation has been passed by the council it shall be submitted for the approval of the Governor, and if approved shall be published in the *Gazette*, and thereupon such bye-law shall have the force of law in the municipality.

Approval and publication of bye-laws.

22. Every bye-law or regulation in force in the municipality may be repealed by the Governor by notice in the *Gazette*.

Repeal of bye-laws.

23. The council may by regulation or bye-law impose a penalty for any breach of any bye-law or regulation made under this Proclamation, and may also impose different penalties in case of successive breaches, but no penalty shall exceed fifty pounds, and any bye-law or regulation may provide that in addition to any such penalty any expense incurred by the council in consequence of any breach of such bye-law or regulation or in the execution of any work directed by any such bye-law or regulation to be executed by any person and not executed by him, shall be paid by the person committing such breach or failing to execute such work.

Penalties for contravention of bye-laws.

24. A copy of the *Gazette* containing any bye-law or regulation of the council shall be evidence of the due making of such bye-law or regulation and of the contents thereof.

Proof of bye-laws.

25. It shall be lawful for the Governor to advance to the said council from time to time such moneys as he may think fit for the proper carrying out of the provisions of this Proclamation as well as for liquidating the debts incurred for municipal purposes between the 5th day of June, 1900, and the taking effect of this Proclamation by the Military Governor or the Provisional Town Council for Pretoria appointed by him to take charge of municipal affairs during that period, and to charge the said council interest thereon at a rate not less than 4 per cent. per annum and on such terms and conditions as to repayments as to the Governor may seem proper. The moneys so advanced as aforesaid with interest thereon, and all moneys advanced by the Treasury prior to the taking effect of

Loan from Government.

* This sub-section was added by Ord. No. I (Priv.) of 1906, sec. 11.

* In the text in *Gazette* it reads "repayments" and not "payments" as given in Proc. 1900-1902.

this Proclamation to the said Military Governor or Provisional Town Council for the erection of the Sunnyside Bridge, the maintenance of the cemetery, and for general expenditure on the town of Pretoria shall constitute a liability of the said council and their successors in office, whether appointed under this Proclamation or appointed or elected under any law hereafter to be promulgated for providing for a municipality for Pretoria, and shall be a charge on the revenue of the council and on all future rates levied on the rateable property within the municipality, whether such rates be made by the council appointed under this Proclamation or by any future council of the municipality.

Approval of Governor to application of loan for permanent works.

26. No such moneys as are referred to in the last preceding section shall be advanced by the Governor for expenditure in connection with the construction of permanent works and undertakings or for the purchase of any lands or buildings unless such construction or purchase has been approved of by him. The council shall submit to him plans and specifications and an estimate of the cost of any permanent works or undertakings.

POWERS AND DUTIES OF COUNCIL.

Powers of council.

27. The council shall have power and authority to do any of the following things:—

Construction of sewers.

(1) To make, construct, alter, keep clean and in repair, roads, streets, dams, furrows, sewers, drains, culverts and bridges within the municipality.

Construction of water-courses.

(2) To excavate, construct and lay down within or beyond the limits of the municipality, watercourses, water-pipes, conduits, sluices, dams, reservoirs, aqueducts, wells and other works for supplying the inhabitants of the municipality with water, and to keep the same in repair or to grant leave to any person or company of persons to lay down pipes or to execute any other like works.

Construction of sewers, etc.

(3) From time to time to cause such sewers, drains and pipes to be made, laid, altered, deepened, covered over and maintained within the municipality as shall be necessary for its effectual draining or any portion thereof, and from time to time to cause to be made and maintained all such reservoirs, sluices, engines, ventilating shafts and other works as shall be necessary for cleansing and ventilating such sewers, drains, and pipes, and if needful to carry such sewers, drains, pipes, and ventilating shafts through and across private lands or beneath or against private buildings, making compensation for any damage done, which compensation shall if not mutually agreed upon be settled by arbitration. The council or any persons duly authorized by them shall have right of access for maintenance of such sewers and drains.

† The word "the" appearing before "plans" in Proc. 1900-1902 is not in the *Gazette*.

‡ The word "if" was omitted in Proc. 1900-1902, but appears in *Gazette*.

This subject

* (4) To lay out within the municipality such locations for aboriginal natives as may be deemed desirable and to compel all aboriginal natives, except such as are employed in domestic service and are lodged on the premises of their employers, to reside within such locations, and to make regulations§ for the proper carrying out of the powers herein conferred.

Back
Laying out of
native
locations.
1923

(5) To acquire tramways, tramcars, and all animals and machinery necessary for the propulsion of such cars by animal, mechanical, or electrical power.

Tramways.

(6) To lease or purchase any land, to acquire any water-right, water-pipes, engines, or other machinery for the purpose of supplying the inhabitants of the municipality with water, and to erect, lease, or purchase, maintain and keep in repair any building or buildings for any municipal requirements or purpose.

Waterworks.

† (7) To establish, maintain, and carry on within the municipality a service of motor omnibuses or other vehicles drawn or propelled by animal, mechanical, or electrical power for the carriage of passengers and parcels and to make charges for such service; provided that this sub-section shall not apply to tramways.

28. The council shall in addition to the powers above enumerated have the power to light in a suitable manner the streets, squares, and thoroughfares in the municipality, and to supply on such terms and conditions as may be fixed by the council, electricity and gas for the purpose of lighting, heating, or applying power to public buildings, places of worship, places of entertainment, private residences, and grounds, shops, warehouses, offices and such like, and for domestic and industrial purposes.

Lighting of
public and
private places.

29. The said council shall have full power and authority to do all things necessary for the laying of main and branch wires and lines of pipes to convey the electric current or gas to be used for the purposes hereinbefore set forth underneath and over the streets of the municipality, and to connect the said wires, lines or pipes with any premises at the request of the owners or occupiers thereof.

Laying of
pipes and
wires.

30. The said council shall have full power and authority to enter into agreements with any person, company, or public body for lighting in a suitable manner the streets, squares and thoroughfares and the supplying of electricity or gas to such places or premises and for such purposes as are hereinbefore set forth, and shall make charges for the said supply in accordance with a tariff to be framed by the said council with the approval of the Governor.

Agreements
for public
lighting.

* Sec. 27 (4) was amended by Ord. No. 31 of 1902, sec. 2, which section was repealed by Act No. 18 of 1909, sec. 1; see also Ord. No. 31 of 1902, sec. 4.

§ For regulations (native locations) see Govt. Notices Nos. 884 of 1904, 414 of 1905, and 19 of 1907.

† This sub-section added by Ord. No. I (Priv.) of 1906, sec. 12.

Recovery of
lighting
charges.

31. If any person or company neglect to pay any charge for electricity or gas or any other sum due to the said council in respect of the supply thereof the council may cut off such supply and for that purpose may cut or disconnect any pipe, electric wire, line, or other work through which the electricity or gas may be supplied, and may until such charge or other sum, together with any expenses incurred by the council in cutting off such supply of electricity or gas, are fully paid but no longer, discontinue the supply thereof to such company or person.

Penalty for
wilful injury
to property
used for
lighting
purposes.

32. Any person who unlawfully and maliciously destroys or injures any property of the municipality or who cuts or injures any wire, line, pipe, or other work used for the conveyance of electricity or gas as aforesaid, shall be guilty of an offence against this Proclamation and shall be liable upon conviction to a fine not exceeding one hundred pounds or to be imprisoned with or without hard labour for any period not exceeding two years.

Power to
enter and
inspect pipes,
wires, etc.

33. Any officer appointed for that purpose by the council may at all reasonable times enter any premises to which electricity or gas is or has been supplied by the council in order to inspect the pipes, electric wires, lines, meters, accumulators, fittings, work and apparatus for the supply of electricity or gas belonging to the council, and for the purpose of ascertaining the quantity of electricity or gas consumed or supplied, or where a supply of electricity or gas is no longer required, or where the council is authorized to take away and cut off the supply of electricity or gas from any premises, for the purpose of removing any pipes, electric wires, lines, accumulators, fittings, works or apparatus belonging to the council, repairing all damage caused by such entry or removal.

MUNICIPAL PROPERTY.

Streets, etc.,
vested in
council.

34. All public streets, roads, squares, and thoroughfares now in existence over land the property of His Majesty, either in His Imperial or Colonial Government, or of private persons or companies within the limits of the municipality, and all public streets, roads, squares and thoroughfares which may hereafter be established over such property with the approval of the council, shall be vested in the said council in trust to keep the same open, and as far as may be consistent with the funds at their disposal in repair for the use and benefit of the inhabitants.

CONTRACTS.

Execution of
contracts.

35. The council may in the name and on behalf of the municipality enter into contracts for the purposes of this Proclamation, and all such contracts lawfully made shall be effectual and binding on the council and all the other parties thereto, their successors, heirs, executors or administrators as the case may be. Every contract shall be deemed to be duly executed by or on behalf of the council if signed by the chairman of the municipality, or if signed by any one or more councillors thereto authorized by resolution of the council.

36. Except in cases of emergency, before any contract for the execution of any work or the furnishing of any goods to the amount of fifty pounds or upwards is entered into by the council, fourteen days' clear notice at the least shall be given in some newspaper circulating in the municipality, expressing the purpose of such contract and inviting any person willing to undertake the same to make proposals for that purpose to the council. The council shall accept the proposal which on a view of all the circumstances appears to them to be the most advantageous; and may take security for the due and faithful performance of every such contract or the council may decline to accept any such proposal. **The provisions of this section shall not apply to goods imported from oversea through the duly appointed agents of the council.*

Advertisement of contracts and invitation to tender in cases of contracts of £50.

REVENUE.

37.† The revenue of the municipality shall consist of

- (1) all rates levied by the council;
- (2) all fines imposed by a competent court for the contravention of municipal regulations;
- (3) all licence moneys on licences issued by the council, and all market dues, tolls, pound fees, and taxes on dogs;

Rates.
Fines.

- (4) all charges made by the council for the supply of electricity, gas, water, and sanitary services.

Licence moneys and market dues, etc.

Sanitary and other charges.

All moneys due for sanitary services shall be recoverable, either from the occupier for the time being, or failing him from the owner of the premises in respect of which the services were rendered.

Sections 38-56 inclusive are repealed by Ordinance 43, 1903, section one.

Making valuations Rateable property.

*EXPROPRIATION OF PRIVATE LANDS.

*57. For the purposes of this part of the Proclamation, the term "land" shall extend to all land whether held under freehold or quit-rent title or under lease and to any water-right.

Definition of land for purposes of expropriation.

58. It shall be lawful for the council, with the approval of the Governor, to acquire by voluntary or compulsory purchase, any land within or without the municipality the property of private persons for any purpose connected with the drainage or sewerage of the municipality, or the supply of water to the inhabitants thereof, or the improvement of the town of Pretoria, and from time to time to sell, let, lease, or otherwise deal with any property acquired for the last-mentioned purpose.

Purchase by agreement or compulsorily for municipal purposes.

* Words in italics were added by Ord. No. 31 of 1902, sec. 5.

† A new sub-section (5) was added by Ord. No. 31 of 1902, sec. 3, which section was repealed by Act No. 18 of 1909, sec. 1.

* See now Municipalities Powers of Expropriation Ordinance (No. 64 of 1903).

Provisions of
Pr. Tr. 5 of
1902 to apply.

59. The provisions of the Expropriation of Lands and Arbitration Clauses Proclamation, 1902, shall *mutatis mutandis* apply to the acquisition by the council of any such land as aforesaid, and to any arbitration proceedings in respect of the purchase price thereof.

MISCELLANEOUS.

Powers of
entry and
inspection.

60. The council and any person duly authorised by them shall, for the purposes of this Proclamation, have power to enter at all reasonable hours in the daytime into and upon any building or land within the municipality for the purpose of executing any work or making any inspection authorised to be executed or made by them under this Proclamation without being liable to any legal proceedings on account thereof.

Authentica-
tion of
notices, etc.

61. Every order, notice, or other document requiring authentication by the council may be sufficiently authenticated without the common seal of the municipality if signed by two councillors or by the Town Clerk.

Penalty for
obstruction of
officials.

62. Every person who shall at any time obstruct the council or any person employed by them or any person appointed by the Governor in the performance of anything which they are respectively empowered or required to do by this Proclamation shall be liable to a penalty not exceeding five pounds.

Cost of
proceedings
for penalties
to be borne
by Municipal
Fund.

63. The council may order proceedings to be taken for recovery of any penalties and for the punishment of any person offending against the provisions of the Proclamation, or of any bye-law made thereunder, and may order the expense of such prosecution or other proceedings to be paid out of the municipal fund.

Offences not
otherwise
provided for.

64. Where any matter or thing is by this Proclamation, or by any order or notice made and published under the authority hereof, directed or forbidden to be done, or where any authority is given by this Proclamation to any person to direct any matter or thing to be done, or to forbid any matter or thing to be done, and such act so directed to be done remains undone, or such act so forbidden to be done is done, in every such case every person offending against such direction or prohibition, shall be deemed guilty of an offence against this Proclamation.

Penalties not
otherwise
provided for.

65. Every person guilty of an offence against this Proclamation or any bye-law in force in the municipality shall for every such offence be liable to the penalty expressly imposed by this Proclamation or by the bye-law, and if no penalty be imposed then to a penalty not exceeding ten pounds.

Recovery of
penalties.

66. All penalties or other moneys payable in respect of any offence against this Proclamation or by any bye-law made thereunder may be recovered before the Court of the Resident Magistrate of Pretoria.

Form of
summons for
contravention
of bye-laws.

67. All offences against any bye-law or regulation in force in the municipality shall be deemed to be offences against this Proclamation, and in any prosecution for contravening

the provisions of any such bye-law or regulation it shall be sufficient to allege that the accused is guilty of contravening or offending against a bye-law or regulation in force in the municipality and alleging the act complained of without describing the bye-law or regulation by number or otherwise.

68. Whenever any penalty shall have been imposed under the provisions of this Proclamation or of any bye-law made thereunder, and the person convicted shall not forthwith pay the same, the Court may direct that such person be imprisoned with or without hard labour for a period not exceeding one month if the penalty imposed do not exceed five pounds, or not exceeding six months if the penalty be above five pounds, and such person shall be detained and kept to hard labour if so ordered, unless he shall sooner pay the penalty.

69. All penalties recovered for offences against the bye-laws of the municipality, or for offences against this Proclamation committed in the municipality or in any way in respect of the municipality shall be paid into the municipal fund.

70. All actions brought by or against the council of the municipality shall be brought or defended in the name of the chairman of the municipality, and all such costs, charges, and expenses as the council shall be put to or become chargeable with by reason of the bringing or defending any such action or under any judgment of the Court shall be paid out of the funds of the municipality.

71. Notwithstanding anything in this Proclamation contained it shall be lawful for the Governor (by notice to be published in the *Gazette*) from time to time to alter the boundaries† of the municipality.

72. This Proclamation may be cited as the Pretoria Municipal Proclamation, 1902.

Imprisonment
in default of
payment of
penalties.

Penalties to
be paid into
municipal
fund.

Form of
actions by
and against
the council.

Alteration of
boundaries
by Governor.

Title.

† For municipal boundaries see Govt. Notices Nos. 254 of 1902 and 767 of 1908.

*Read out
14/1905 with the
business*

Proclamation
(Trans.) No. 8
of 1902.

* PROCLAMATION No. 8 of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 5th February, 1902.)

TO AMEND LAW No. 20 OF 1895, REGULATING THE PAYMENT
OF TRANSFER DUTY.

Preamble.

WHEREAS it is necessary to make better provision for the payment of transfer duty on the sale and alienation of fixed property and of leases of fixed property situated in this Colony;

Now therefore, by virtue of the authority in me vested, I do hereby declare, proclaim, and make known as follows:—

Laws
repealed.

1. (1) Law No. 20 of 1895, and so much of any other law as may be inconsistent with or repugnant to this Proclamation shall be and is hereby repealed except as to the recovery of any duty, interest, or penalty due or incurred, or any act done before the taking effect of this Proclamation.

(2) So much of Law No. 2 of 1871 or of any other law which requires a stamp duty to be paid on the value of fixed property on the transfer thereof, shall be and is hereby repealed.

Terms
defined.

2. The term "fixed property" in this Proclamation shall include

(1) land or the usufruct thereof or any other limited interest therein other than a lease;

(2) mynpachts claims and stands;

(3) any right to minerals or precious stones on any land.

The term "Governor" shall mean the officer for the time being administering the Government of the Transvaal.

The term "registration officer" shall mean and include any public official appointed by the Governor to register titles to fixed property according to law.

The term "registration office" shall mean and include any public office where title to fixed property is registered according to law.

The term "lease" shall include "sub-lease", and the term "sale" shall include "cession".

Until the Supreme Court of this Colony is established the Special Criminal Courts in Pretoria and Johannesburg shall have, each within its own jurisdiction, the powers and jurisdiction by this Proclamation vested in the Supreme Court or any judge thereof.

Persons
chargeable
with transfer
duty.

‡ *Save as in the principal law or this Ordinance excepted a duty (called transfer duty) of one pound five*

* See Ord. No. 57 of 1903, sec. 9; 14, 1905.

‡ This section substituted by Ord. No. 14 of 1905, sec. 1; see Ord. No. 57 of 1903, sec. 9, as to leases and licenses under Settlers Ord., 1902.

shillings per centum on the value of any fixed property and on the value of any such lease as is hereinafter mentioned shall be payable and paid

(1) by the person acquiring or becoming entitled to any such property or lease by way of purchase, cession, exchange, donation, or in any manner otherwise than by way of legacy testamentary or other inheritance;

(2) by the person entering into a lease of any fixed property (other than of a mynpacht claim or right to minerals or precious stones) in case the lease be for not less than twenty-five years or for the term of the natural life of any person mentioned therein or in case it be renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period of the lease amount in all to not less than twenty-five years;

(3) by the person entering into a lease of any mynpacht claim or right to minerals or precious stones for any period.

VALUATIONS FOR PAYMENT OF TRANSFER DUTY.

4.* For the purpose of ascertaining the value of fixed property or a lease thereof chargeable with transfer duty under the principal law as amended by this Ordinance the following provisions shall apply:—

Value of fixed property—how ascertained.

(1) In any case of a sale or purchase of such property or lease the full and true consideration shall be set forth by the seller and purchaser respectively in the Forms A and B of the Schedule to the principal law and duty shall be charged on the amount of such consideration.

(2) In the case of such property or lease changing proprietors otherwise than through the medium or by means of purchase and sale, it shall be the duty of the Receiver of Revenue authorized to receive transfer duty in respect of such property or lease to require the parties concerned to set forth the value of such property or lease in as nearly as possible the Forms E, F, and G of the Schedule to the principal law.

(3) In the case of a person entering into such a lease of fixed property as is mentioned in sub-section (2) of the last preceding section, transfer duty shall be paid on the full value of the property leased, and such value shall be declared to by the lessor and lessee respectively.

(4) In the case of a person entering into a lease of any mynpacht claim or right to minerals or precious stones the total amount of rent for the whole period for which the lease has been entered into including the periods for which the lessee has the right of renewal (if any) and in addition any other consideration which may be given for such lease shall be deemed and taken to be the value on which transfer duty shall be paid in respect thereof, and such rent or other consideration (if any) shall be fully set out by the lessor and lessee in Forms C and D

* This section, 4, was substituted by Ord. No. 14 of 1905, sec. 2.

of the Schedule to the principal law; provided always that if any such lease is for a period exceeding twenty-five years or is renewable at the will of the lessee from time to time for periods which together with the first period thereof exceeds twenty-five years in all or indefinitely such lease shall for the purposes of estimating the amount of transfer duty on the same be deemed to be a lease for twenty-five years reckoned from the date thereof at a rent equal to the average rent payable during the whole period thereof, and if any such lease shall lapse or expire by non-renewal within a period of twenty-five years from the date thereof the lessee shall upon such lapse or expiry be entitled to claim from the Colonial Treasurer the difference between the amount of transfer duty paid in respect of such lease and the amount which would have been payable if the period of the same had been the period for which it was actually in force; provided further that such claim shall be made within six months after the lapse or expiry aforesaid and that there be transmitted with such claim a copy attested by the registration officer of the registered entry or document relative to such lapse or expiry.

(5) If the purchase price or other consideration for any such property or lease consists of or includes shares or other securities of a company proposed to be formed but not yet existing, the value of such shares or securities shall for the purposes of transfer duty be their nominal value, and in the case of shares or securities of a company already formed the value thereof shall for purposes of transfer duty be the market quotation price on the date of the purchase if the same be ascertainable by the Receiver of Revenue.

(6) Except in the case of a bona fide purchase and sale whenever a Receiver of Revenue authorized to receive transfer duty is satisfied that any consideration or value declared as aforesaid is considerably less than what is just and fair he shall assess the amount on which it shall appear to him that transfer duty should be paid and if the person chargeable with the duty refuses to accept such assessment the amount on which transfer duty shall be paid shall be submitted to and decided by arbitration in manner provided by the Arbitration Ordinance 1904.

(7) Pending any submission to arbitration under the last preceding sub-section the person chargeable with transfer duty may pay it under protest on the amount assessed by the Receiver of Revenue who shall give a receipt for such payment and such receipt shall be an authority to any registration officer to pass transfer of the property or lease in respect of which transfer duty is payable.

(8) The provisions of sub-sections (6) and (7) of this section shall apply in lieu of sub-sections (1), (2), (7), and (8) of section four of the principal law in the

circumstances set forth in the proviso to section five and in the second proviso to sub-section (2) of section thirteen of the principal law.

5. If in any case some additional valuable consideration shall be given or promised or agreed to be given by the party to any sale or exchange or lease who is chargeable with the payment of transfer duty to the other party to the contract, or to any third person for or in respect of or in connection with such sale, exchange, or lease, then such additional consideration, if in money, shall be taken into account in estimating the amount on which transfer duty is to be paid, and if such additional consideration be other than money, then the said party shall be at liberty to put by way of solemn declaration a value in money upon such additional consideration, and such value shall be taken into account in estimating the amount on which transfer duty is to be paid; provided that the provisions of sub-sections (1), (2), (7), and (8) of the last preceding section shall apply to the value so put in case it shall appear to the Receiver of Revenue to be considerably less than the just and fair value of such additional consideration, or in case the said party shall not have put a value thereon.

Any additional consideration passing to be taken into account in ascertaining value of property.

6. As often as by any transaction in connection with the alienation of any fixed property or lease liable to the payment of transfer duty, the person acquiring such property or lease shall become liable to pay over and above the sum payable to the person from whom such property or lease is acquired all or any of the following charges or expenses arising out of or connected with the said transaction: that is to say

Costs and charges not forming part of valuation on which duty is payable.

(1) the cost of any survey of the property which shall have been made prior to and for the purposes of the said transaction, and of any survey of such property which may be made after the transaction, and the cost of all diagrams and sub-divisions, and of the plan of the property exhibited at the time of the transaction;

(2) the charge made by any auctioneer for conditions of sale;

(3) the commission (if any) paid by the person acquiring the property or lease to any auctioneer, broker, or agent by or through whom the transaction may have been effected not exceeding five pounds per centum upon the amount of the consideration;

(4) the auction duty payable upon any sale;

(5) the transfer duty payable thereon;

(6) the cost of all deeds necessary for effecting transfer of such property or lease, and of the mortgage deed (if any), and of all necessary stamps;

(7) the charges of conveyancers and agents incurred in effecting the transfer of the said property or lease;

(8) the rent or tax (if any) payable to Government upon the property;

then such charges or expenses shall not, nor shall any of them, be deemed or taken to form part of the consideration given for such property or lease so as to be liable to the payment of transfer duty.

When duty is payable.

7.* The transfer duty upon or in respect of every sale, lease, exchange, or donation shall be payable within six months from the date of the sale, lease, exchange, or donation as the case may be, and from and after the expiration of such six months and until payment or deposit of the amount of such duty, interest thereupon at the rate of twelve pounds per centum per annum shall be payable and shall be recoverable as part of the duty.

When payable in cases of deferred possession.

8. As often as any such contract of sale, lease, exchange, or donation shall be entered into, by which contract it is stipulated that possession of such property shall not be given, or that the said sale, lease, exchange, or donation shall not take effect until some future date, the date at which the contract was entered into, and not such future date, shall be the date from which the space or term of six months mentioned in the last preceding section shall be reckoned.

When duty payable in cases of conditional sale, etc.

9. As often as any sale, lease, exchange, or donation of fixed property shall be conditional, then the said space or term of six months shall begin to be reckoned from the day on which the contract †*became binding upon the parties thereto*; provided that in case any such contract shall become dissolved by reason of the happening of any dissolutive condition after the payment of transfer duty, then upon proof given of such dissolution such duty shall be returned.

Liability to duty in cases of joint ownership.

10. Whenever any fixed property or lease shall be registered in the name of more persons than one as joint owners, all the said persons shall be deemed and taken for the purposes of the payment of duty upon or in respect of any sale, alienation, or lease, by any of them to any other or others of them, to have equal shares and interest in the said property or lease, unless the particular share or interest of *each* § shall be declared and set forth in the title deed or other instrument recorded in the deeds or other registration office.

EXEMPTION FROM TRANSFER DUTY.

Remission of duty forbidden.

11. No transfer duty shall be remitted upon any transaction on which such duty is required to be paid under this Proclamation except as specially therein provided and except upon transactions with regard to which the transfer duty, if paid, would be paid directly from *and* § out of the Imperial or Colonial revenue.

Return of duty if sale, etc., declared void.

12. As often as any contract of sale, lease, exchange, or donation upon which transfer duty shall be payable, shall be set aside, or cancelled, or declared or made void by the

* By Trans. Proc. No. 27 of 1902, sec. 2, no interest is to be deemed to accrue under this section in respect of the period from 1st Oct., 1899, to the 20th May 1902—the date of the opening of the registration offices.

† Words in italics substituted by Ord. No. 14 of 1905, sec. 6.

§ Words in italics omitted in Proc. 1900–1902, but appear in *Gazette*.

judgment of any competent Court, the transfer duty upon such sale, lease, exchange, or donation, if unpaid shall not be payable, and if paid shall be returned.

|| 13. Exemption from transfer duty shall be allowed in the cases and to the extent hereinafter set forth, that is to say,

Exemptions
from obligation
to pay
duty.

(1) when any person, being by law or appearing upon the records of the deeds or other registration office to be a joint owner of any fixed property or lease, shall purchase or acquire that property, or lease, or any portion thereof, he shall not be charged with transfer duty upon that proportion of the value of such property or lease which represents his individual share or interest;

(2) in every case of voluntary or compulsory partition between joint owners of fixed property, or any lease, all changes in the records of the deeds or other registration office required for the due registration of the separate shares to be held by each in severalty, shall be made without payment of transfer duty, in case the person claiming exemption from such payment shall make and deposit with the officer authorized to receive transfer duty, or with the registration officer a solemn declaration as nearly as is material in the Form "H" in the Schedule to this Proclamation, that he has not given, nor is to give any money or other valuable consideration to his late co-proprietors or any of them for or in regard to the share assigned to him, and which he desires to have registered in his name; provided that if for the equalising of partition, or for any other reason, such person shall give, or shall have agreed to give to his late co-proprietors or any of them any money or other valuable consideration for the said share so assigned to him, he shall by solemn declaration as aforesaid state the amount or value given or to be given by him, and transfer duty shall be payable upon such value or amount; provided further that the provisions of sub-sections (1), (2), (7), and (8) of section four of this Proclamation shall apply to the amount or value so stated in case it shall appear to the Receiver of Revenue who is to receive the transfer duty that such amount or value is considerably less than the just and fair difference in value of the separate shares.

(3) The provisions of the preceding sub-sections shall apply *mutatis mutandis* to any division of fixed property, or of any lease between spouses married in community, whether such division arises in consequence of the death of one of the spouses, or of divorce, or of an Order of Court.

(4) The husband of any woman to whom he shall be married in community of property may have any property or lease standing in the deeds or other registration office in her name removed into his own name without the payment of transfer duty.

|| See Ord. No. 57 of 1903, sec. 9, as to leases and licences under Settlers Ord., 1902; and see also Act No. 33, 1907, sec. 13 (transfers to Governor and municipal councils); Act No. 34 of 1908, sec. 64 (grant of freehold under Townships Amendment Act).

(5) As often as the trustee of any insolvent estate, in the exercise of the powers by law conferred on him as such trustee, shall refuse to fulfil any contract for the sale, lease, exchange, or donation of fixed property belonging to the estate made by the insolvent before sequestration, no transfer duty upon such sale, lease, exchange, or donation shall be payable, and such duty if paid before the sequestration shall be returned; and in case of the subsequent sale, lease, or exchange of such property by the trustee of the insolvent estate, the declaration of the said trustee may be altered so as to set forth the fact of the previous sale, lease, exchange, or donation, and his repudiation thereof.

(6) As often as the trustee of any insolvent estate shall elect to abandon any agreement which shall have been entered into by the insolvent for the purchase, lease, or exchange of any fixed property, no transfer duty shall be payable upon such sale, lease, or exchange; provided that such duty, if it has been paid by the insolvent, shall not be returned; and provided that the solemn declaration to be made in case of any second or subsequent sale, lease, or exchange shall be as nearly as is material in the form marked "J" in the Schedule to this Proclamation.

(7) As often as any insolvent shall by agreement with his creditors be permitted to retain or take over any of the fixed property or any lease which belonged to such insolvent at the date of the order for sequestration and still remaining **enregistered* in the name of such insolvent, no transfer duty shall be payable upon such transaction.

(8) It shall be lawful for the Governor, upon proof made to his satisfaction that any person acting bona fide has made a mistake in regard to the enregisterment of any transfer, to permit such transfers as may be necessary for the correction in the deeds or other registration office of the said mistake to be passed free of transfer duty.

(9) If in any case any person who, having become surety for the payment by the purchaser of the purchase money of any property or lease, shall have paid such purchase money, and by reason of insolvency, absence from the Colony or other cause, such surety shall be unable to recover the money so paid, and shall be willing or desirous of taking transfer of the property or lease into his own name, the Governor may, if he shall see fit, upon proof by solemn declaration of the facts, authorize the passing of transfer of the property or lease direct from the vendor to such surety upon payment of single duty, whether paid by the purchaser or by the surety, as if the sale had been made *ab initio* to such surety; provided that nothing herein contained shall affect the respective rights and remedies of such vendor and such purchaser in regard to such first or original sale.

* Given as "unregistered" in Proc. 1900-1902, but "enregistered" in *Gazette*.

(10)* *In the case of a sale of lapsed claims or stands under the provisions of Law No. 15 of 1898 or any amendment thereof no transfer duty shall be payable.*

(11)* *In every case in which any person shall by the records of the deeds or other registration office appear to be merely a trustee for any other person the property so held in trust may be removed from the name of the trustee to that of some other trustee or that of such other person entitled to have it so removed without the payment of transfer duty.*

14. As often as any transaction upon which transfer duty shall be payable shall be cancelled and rescinded by mutual consent of the parties thereto before transfer made, without any part of the consideration therefor having been paid or any valuable consideration given or promised for the purpose of obtaining the consent to such cancellation, the transfer duty upon such transaction shall be remitted in case such transaction shall have been so cancelled and rescinded within six months from the date thereof, but not otherwise; provided

Remission of duty when transaction cancelled.

(1) that the parties thereto shall make in reference to such cancellation solemn declarations which shall be in substance in the forms marked "K" and "L" in the schedule to this Proclamation with the necessary alterations in respect to each class of transaction;

(2) that the Governor may in case any such party shall from any cause be unable to make such declaration, dispense with his declaration and may, should he see fit, require or accept the declaration of any agent or person acquainted with the circumstances.

15. As often as any transaction upon which transfer duty shall be payable shall be by mutual consent of the parties thereto cancelled and rescinded before transfer made, then in case any part of the consideration shall have been paid or any valuable consideration shall have been given or promised by either party to the other for or in respect of such cancellation, transfer duty shall be payable only upon the sum so paid, or the value of any consideration other than money so given, such value to be ascertained in manner in sub-section (2) of section *four* of this Proclamation provided; and the owner may on a second alienation of the said property amend the declaration to be made by him by setting forth the circumstances of such previous transaction and of the cancellation thereof.

Partial remission when transaction cancelled after part consideration paid.

*16. Whenever any person requiring to have any transfer or change of name effected in the deeds or other registration office shall claim to be exempted from the payment of transfer duty by virtue of any of the exemptions mentioned and contained in this Proclamation, it shall be the duty of the registration officer to require due proof by solemn declaration if need be of all facts and circumstances by reason or on

Enquiry by registration officer when exemption sought.

* Sub-secs. (10) and (11) were added by Ord. No. 14 of 1905, sec. 7.

† See, however, Ord. No. 14 of 1905, sec. 8.

account of which such exemption is demanded, and he may also require the production of any deeds or instruments connected with the case and tending to show whether or not such exemption ought by law to be allowed.

Hearing by
Supreme
Court of dis-
pute between
registration
officer and
claimant for
exemption.

*17. As often as any question shall arise between any registration officer and any person claiming to be entitled to any such exemption as aforesaid, regarding the right to such exemption or the extent of that right, it shall and may be lawful for the Supreme Court or any Judge thereof to hear the said registration officer and the said person (or any person or persons representing each respectively) as to the matter in question, and to examine the proofs (if any) which shall have been offered in support of the claim to exemption, and to call for such further proofs as may be necessary, and in a summary manner to make such order in the premises as shall to justice appertain.

RECEIPTS FOR TRANSFER DUTY AND DECLARATIONS.

To whom duty
payable.

18. All duties and interest under the provisions of this Proclamation shall be paid to the Receiver of Revenue for the district in which the fixed property to be transferred or leased is situate, or to the Receiver of Revenue at the place where the title to such fixed property or lease is registered. The Receiver of Revenue shall give a receipt for such duties and interest, and no transfer of any such property, and no registration of a lease or cession thereof in respect of which duty is payable shall be made unless such receipt shall have been produced to and deposited with the registration officer.

Solemn
declaration of
sale, etc.

19. No Receiver of Revenue shall grant a receipt for the amount of any such duty as aforesaid payable upon or in respect of any sale and purchase, lease, exchange, or donation, until the parties shall have taken and subscribed appropriate forms of solemn declaration as nearly as the circumstances permit, as set out in the schedule to the Proclamation. The Receiver of Revenue may if he think fit require the production of any deeds or instruments connected with the case, and tending to show what amount of transfer duty is payable.

Solemn
declaration by
agent or
broker.

20. As often as it shall appear to the Receiver of Revenue that any agent, auctioneer, broker, or other person acting for or on behalf of any party to a transaction in respect of which transfer duty is payable has himself in his said capacity made and entered into such transaction then it shall be lawful for such Receiver of Revenue to demand and receive the solemn declaration of such agent, auctioneer, broker, or other person as aforesaid either in lieu of or in addition to that of his principal according as such Receiver of Revenue shall in the circumstances of the case deem fit; and the solemn declaration to be taken as aforesaid shall as nearly as may be in the Form "I" in the schedule to this Proclamation.

* See, however, Ord. No. 14 of 1905, sec. 8.

21. If in any case it shall be made to appear that one of the parties to any such transaction as aforesaid has died or has become mentally incapacitated or has departed from the Colony without having taken and subscribed the necessary solemn declaration, the Receiver of Revenue may either dispense with such solemn declaration altogether or receive in lieu thereof the solemn declaration of such other person as may under the circumstances of the case be in a position to testify to the particular matters to be set forth in such declaration.

Solemn declaration in case of death, etc., of one of the parties.

AS TO SALES TO AGENTS FOR ALLEGED PRINCIPALS.

22. As often as any fixed property or lease shall be sold by public sale the auctioneer shall before or at or forthwith after the closing of the bidding ascertain from the bidder for whom he purchases, and if such bidder shall profess to purchase for some person other than himself then the auctioneer or his assistant shall, in case the purchaser so disclosed shall be approved of, take down in writing the name of such bidder and of the principal for whom he purchases, and until the name of the purchaser, whether the bidder himself or some one else for whom he purchases, shall have been taken down in writing there shall be no sale to any person and the property or lease may be again put up to competition; provided that it shall not be necessary that the name of the person for whom any bidder shall be purchasing shall be announced publicly to the bystanders if it be made known to the auctioneer and be by him or his assistant taken down in writing as aforesaid.

Person bidding as agent to disclose name of principal.

23. Should any bidder whose bid shall have been accepted by the auctioneer refuse to declare when called upon to do so by the auctioneer for whom such bidder purchases it shall be lawful for the auctioneer to treat and consider such bidder as being himself the purchaser, and such bidder shall in such case be deemed and taken to be to all intents and purposes the purchaser, or the auctioneer at his election may treat such bidding as null and void and proceed afresh as if it had never been made; provided that the auctioneer having once made his election either to treat such bidder as the purchaser or to proceed to sell afresh shall not be at liberty afterwards to alter such election.

Proceeding where bidder refuses to disclose name of principal.

24. If in any case any bidder should declare as aforesaid the name of some person as his principal who shall be taken down as the purchaser and who shall afterwards refuse to accept the property purchased in his name then unless the bidder shall produce a sufficient authority in writing from such alleged principal authorizing such bidder to make such purchase for such principal the bidder shall himself (without prejudice to other questions between the parties) be liable to pay transfer duty; provided that such bidder paying transfer duty shall be entitled to recover the same from his principal in case he shall succeed in proving that such principal did in fact give him authority to make the purchase in dispute.

Proceeding where principal repudiates purchase.

Provisions of section 24 to apply to private sale and to leases, etc., by agent.

25. The provisions of the last preceding section relative to agents bidding at public sales shall extend and apply *mutatis mutandis* to persons purchasing fixed property or leases as agents for alleged principals otherwise than at public auction; and also to persons acquiring by way of lease fixed property for alleged principals where such lease comes within the provisions of sub-sections (2) and (3) of section *three* of this Proclamation.

Auctioneer, broker, etc., forbidden to sell, etc., to undisclosed principal.

26. No auctioneer, broker, or agent shall take down or receive in regard to any purchase or lease of fixed property on which transfer duty is payable the name of any person as purchasing or leasing such property in the manner commonly called and written "q.q." or receive in any other form the name of any person as purchasing or leasing such property for an unnamed principal; and any auctioneer, broker, or agent contravening this section of this Proclamation shall incur and be liable to any penalty not exceeding fifty pounds. The provisions of this section shall also apply to the purchase of any lease where transfer duty is payable on such purchase.

Payment of duty when sale or lease taken over by agent.

27. If in any case of purchase or lease the person whose name shall have been declared and taken down as purchaser or lessee of such property shall deny that he gave authority for the making of such purchase or lease, or if for any other reason such person shall decline to accept such purchase, lease or exchange, and the agent or alleged agent shall be willing to take such property for his own individual account, and the vendor or lessor shall consent thereto, no transfer duty shall be payable upon the sale or lease or alleged sale or lease to the alleged principal; but only a single transfer duty as if the sale or lease had been made *ab initio* to the alleged agent in his individual capacity, and the solemn declarations by law required to be made shall be altered in the manner indicated in the forms marked "M" and "N" in the schedule to this Proclamation.

Private sales and leases to undisclosed principals declared null and void.

28. Every sale of fixed property made otherwise than by auction, and every lease falling under the provisions of sub-sections (2) and (3) of section *three* of this Proclamation in regard to which the purchaser or lessee shall not profess to purchase or lease for himself in his individual capacity, shall be wholly null and void unless at the time of making and completion thereof the name of the principal for whom the purchase or lease is made shall be disclosed and inserted in the contract which may be made in regard to such sale or lease.

Lease of land for ten years and more to be notarial.

*29. (1) No lease of any mynpacht, claim or right to minerals, and no lease of any land or any stand for a period not less than ten years or for the natural life of any person mentioned therein, or which is renewable from time to time at the will of the lessee indefinitely, or for periods which

* See, however, Ord. No. 57 of 1903, sec. 9 (leases and licences under Settlers Ord., 1902, need not be drawn before a notary public); Act No. 34 of 1908, secs. 51 and 56.

together with the first period thereof amount in all to not less than ten years, shall be of any force or effect if executed after the taking effect of this Proclamation unless executed before a notary public, nor shall it be of any force or effect against creditors or any subsequent bona fide purchaser or lessee of the property leased or any portion thereof unless it be registered against the title deeds of such property.

†(2) *No cession of any such lease as is mentioned in the preceding sub-section, made after the taking effect of this Proclamation, shall be of any force or effect against creditors or any subsequent bona fide purchasers thereof, unless such cession be registered in the registration office in which such lease is registered.*

‡(3) (a) Every owner or lessee of land who has sub-divided such land into a number of lots not being stands, and has leased such lots on leases which had they been executed after the taking effect of this Proclamation would under the provisions of sub-section (1) of the section require to be registered, shall within six months after the publication of this Proclamation cause a duly approved general plan of the land so sub-divided to be lodged with the Registrar of Deeds together with his title or lease to such land, and shall also furnish such officer with full information of the terms of the leases affecting such lots and the names of the present holders thereof according to the books kept by him for registering such leases and the cessions thereof.

Any such owner or lessee who shall fail to comply with the terms of this sub-section shall be liable to a penalty of one hundred pounds.

(b) It shall be competent for the Receiver of Revenue of the district in which any land so sub-divided as in the last preceding sub-section mentioned is situated, or any person authorized by him, to inspect at all reasonable times the books kept by the owner or lessee of such land in connection with the leases of such lots.

(c) No such owner or lessee shall cause any cession of any lease of any such lot to be registered or entered in any of his books or registers unless such cession shall bear an endorsement upon it showing that it has already been registered at the proper registration office. Any person contravening this sub-section shall be liable to a penalty of one hundred pounds for each contravention.

(4) For the proper carrying out of the provisions of this section the Governor may make regulations prescribing the manner in which leases and sales or cessions thereof shall be registered, and such regulations shall be published in the *Gazette*.

30. No contract of sale of fixed property shall be of any force or effect unless it be in writing and signed by the parties thereto or by their agents duly authorized in writing.

Contract of
sale to be in
writing.

† This new sub-section was substituted by Trans. Proc. No. 27 of 1902. sec. 1.

‡ See Trans. Proc. No. 35 of 1902, sec. 4 (d), and Act No. 34 of 1908, sec. 51.

Resale when vendor unable to enforce contract of purchase.

31. As often as it shall be made to appear to the Governor by any person who shall have sold any fixed property upon which sale transfer duty shall be payable that the purchaser of such property cannot be discovered within the Colony, or has left the Colony without taking transfer and without paying any part of the purchase money, and that such vendor is unable to obtain or enforce the fulfilment of the contract, it shall be lawful for the Governor to permit the vendor aforesaid, in case he shall sell the said property again, to make the necessary alteration in the form of solemn declaration to be made by him in reference to such second sale; provided that nothing herein contained shall alter or affect the law in reference to the respective rights or remedies of such vendor and such purchaser in regard to such first or original sale.

Declarations in case transaction concluded before taking effect of Proclamation.

32. In case any sale and purchase or other transaction upon which transfer duty is chargeable shall have been concluded before the taking effect of this Proclamation, and the solemn declarations required by the law existing at the time of the completion of such sale and purchase or other transaction shall have been made, no further declarations under the provisions of this Proclamation shall be necessary, but in all cases where no such declarations shall have yet been made the declarations to be made and subscribed shall be those directed by this Proclamation and none other.

Before whom declarations are to be made.

*33. (1) *Any person who shall make any declaration which contains any mis-statement or which conceals or fails to disclose any material or necessary fact relative to the nature of the transaction or the consideration passing or the value or amount on which duty is payable shall incur a penalty not exceeding one hundred pounds.*

(2) *And if by reason of any such mis-statement concealment or non-disclosure a less sum for duty has been paid than should have been paid the person liable for payment shall be liable to make good to the Colonial Treasury the difference between the sum paid and the sum which should have been paid together with interest thereon at the rate of twelve per centum per annum and all costs of recovery.*

(3) *Any person who shall with intent that the payment of any amount payable as transfer duty may be evaded by himself or any other person knowingly and corruptly make a declaration under the principal law as amended by this Ordinance which is untrue in any material particular or from which is wilfully omitted any fact material for the purpose of enabling the amount of duty to be correctly assessed shall be liable on conviction to the penalties prescribed in law for perjury.*

Recovery of duty, etc., by Crown.

†34. *Transfer duty and any interest valuation fees fines and penalties or other sums payable to the Colonial Treasurer under the principal law as amended by this Ordinance shall be a debt due to His Majesty in His Colonial Government and may be recovered by action in any competent Court.*

Short title.

35. This Proclamation may be cited for all purposes as the Transfer Duty Proclamation, 1902.

* This section, 33, was substituted by Ord. No. 14 of 1905, sec. 9.

† This section, 34, was substituted by Ord. No. 14 of 1905, sec. 10.

SCHEDULE.

FORM "A".

Declaration of Seller.

I, A.B., do solemnly and sincerely declare that on the.....day of 19...., and not before I sold to C.D. the property herein described, that is to say (here describe the property), and that the full and true consideration passing to me for such sale is £....., and I further declare that there is not any agreement, condition, or understanding between me and the said C.D., whereby he has paid or is to pay to me or to any other person whomsoever for or in respect of or in connection with the purchase by him of the said property any sum of money over and above the said sum of £....., save and except certain charges or payments which fall under or come within one or more of the heads or items of charges or payments mentioned in section six of the Transfer Duty Proclamation, 1902.

And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to receive for my use or benefit or at my instance or request any valuable consideration besides the said sum of £....., save and except in so far as any of the charges above mentioned, and to be paid by the said C.D., might be held or taken to be payable for me or on my behalf.

And I further declare that the said C.D. is the only person who has ever purchased the said property from me, and I never sold the same to any other person. And I make this solemn declaration conscientiously believing the same to be true.

A.B.

Declared before me this..... day of.....
19....

FORM "B".

Declaration of Purchaser.

I, C.D., do solemnly and sincerely declare that on the..... day of..... 19...., and not before I bought from A.B. the property herein described (here describe the property) and that the full and true consideration given by me for such property, whether to the said A.B. or any other person in connection with such sale is £....., and I further declare that I have not nor has any person to my knowledge on my account given nor is there by me or on my behalf to be given any other valuable consideration for or in respect of or in connection with the alienation to me of the said property save and except certain charges or payments which fall under or come within some one or more of the heads or items of charges or payments mentioned in section six of the Transfer Duty Proclamation, 1902. And I make this solemn declaration conscientiously believing the same to be true.

C.D.

Declared before me this.....day of.....
19....

FORM "C".

By Lessor of Fixed Property.

I, A.B., do solemnly and sincerely declare that on the..... day of..... I leased to C.D. for a * period of..... the property herein described (here set forth the property) and that the full consideration passing to me for such lease is:

(a) A yearly rental of £.....

(b) By way of further consideration £.....

I further declare that there is not any agreement, condition, or understanding between me and the said C.D., whereby he has paid, or is to pay, to me or to any other person whomsoever for, or in respect of, or in connection with, the lease to him of the said property any sum of money or other valuable consideration over and above the said sum of £....., save and except certain charges

* The period of the lease, including the periods of renewal, if any, should here be stated.

or payments which fall under or come within some one or more of the heads or items of charges or payments mentioned in section six of the Transfer Duty Proclamation, 1902.

And I make this solemn declaration conscientiously believing the same to be true.

Declared before me at.....this.....day of, 19....

Justice of the Peace.

FORM "D".

Declaration of Lessee.

I, C.D., do solemnly and sincerely declare that on the.....day of I hired from A.B., for a period of....., the property herein described (here set forth the property) and that the full consideration given by me for the said lease is:

- (a) A yearly rental of £.....
(b) By way of further consideration £.....

I further declare that there is not any agreement or understanding between me and the said A.B., whereby I have paid, or am to pay, to the said A.B., or to any other person whomsoever for, or in respect of, or in connection with, the lease to me of the said property any sum of money or other valuable consideration over and above the said sum of £....., save and except certain charges or payments which fall under or come within some one or more of the heads or items of charges or payments mentioned in section six of the Transfer Duty Proclamation, 1902.

And I make this solemn declaration conscientiously believing the same to be true.

Declared before me at....., this.....day of, 19....

Justice of the Peace.

FORM "E".

Declaration of Exchange.

We, the undersigned,.....proprietors respectively of the following properties, that is to say:

I, the said....., proprietor of....., and I, the said....., proprietor of....., do severally, solemnly, and sincerely declare that we have mutually agreed with each other to the following exchange, namely:

(Particulars of the exchange and value of the properties exchanged.)||

And we declare that we have not, nor has any person to our knowledge on our account given or received, nor is there by us or on our behalf to be given or received by the one to or from the other of us any money or other valuable consideration other than as above stated, for, or in respect of, the exchange and the mutual transfer of the aforesaid properties.

And we make this solemn declaration conscientiously believing the same to be true.

Declared before me at....., this.....day of, 19....

Justice of the Peace.

|| If any money or other valuable consideration is given in respect of the exchange it should be stated here.

FORM " F ".

Declaration of Donor.

I, A.B., declare solemnly that in consideration of the special affection and love which I feel and cherish for C.D., and by reason of the good and valid consideration which specially prompts me thereto, I, by way of donatio inter vivos or gift between living persons have irrevocably presented, given, and bestowed on, and for the benefit of, the said C.D. certain property.

(Here describe the property.)

And I declare that the value of the said property is to the best of my knowledge and belief £.....

And I, the said A.B., do further declare that I presented the said property as a gift to the said C.D., on the day of....., 19...., and not before that date, and that I neither have nor shall receive any valuable consideration for, or on account of, the alienation of the said property.

And I make this solemn declaration conscientiously believing the same to be true.

Declared before me at....., this.....day of....., 19....

Justice of the Peace.

FORM " G ".

Declaration of Donee.

I, C.D., declare solemnly that I accept the present by way of donatio inter vivos or gift between living persons made and given to me by A.B. of certain property.

(Here describe the property.)

And I, the said C.D., declare that the value of the said property is, and that the said A.B. made the gift on the day of....., 19...., and not before that date ; and that neither I nor anyone else on my behalf, or for my account, has given, or promised, or intends to give, or pay any valuable consideration whatever for, or on account of, the alienation of the said property.

And I make this solemn declaration conscientiously believing the same to be true.

Declared before me at....., this.....day of....., 19....

Justice of the Peace.

FORM " H ".

Declaration on Partition of Fixed Property.

We, the undersigned, joint proprietors of the farm (or erf) called..... in extent.....morgen and.....square roods, No....., situated in the district of..... do severally, solemnly, and sincerely declare that we have mutually agreed each with the other to the following partition of the said land, so as to give to each party a defined portion as his separate and exclusive property, namely :-

(Here set out particulars of sub-division.)

And we declare that we have not, nor has any person to our knowledge on our account, given or received, nor is there by us, or on our behalf, to be given or received by the one to or from the other of us any money or other valuable consideration for, or in respect of, the partition and mutual transfer of the aforesaid land.

And we make this solemn declaration conscientiously believing the same to be true.

Declared before me at..... this.....day of....., 19....

Justice of the Peace.

FORM "I".

Declaration of Sale by an Agent.

I, do solemnly and sincerely declare that I have acted as the agent (auctioneer or broker as the case may be) in making the sale* (or purchase) of certain....., sold by..... to and that I know of my own knowledge the amount of the consideration given therefor; and I do further declare that the said sale was made on the....., and not before; and that the sum of is to the best of my knowledge and belief the full and entire consideration to be given in regard to the alienation of the said property, and that to the best of my knowledge and belief no further or other valuable consideration has been given or is to be given by or on behalf of the said for or in respect of the said property, save and except certain charges and payments mentioned in section six of the Transfer Duty Proclamation, 1902.

And I make this solemn declaration conscientiously believing the same to be true.

Declared before me at....., this.....day of 19....

Justice of the Peace.

FORM "J".

Declaration of Seller.

When there has been a former sale to a purchaser subsequently declared insolvent whose trustee has elected to abandon the sale.

I, A.B., do solemnly and sincerely declare that the sum of £..... is the full and entire consideration for which I have sold to C.D. the following property, that is to say:

(Here describe the property.)

And I declare that I sold the same to the said C.D. on the.....day of....., 19...., and not before, and that there is not any agreement, condition, or understanding between me and the said C.D. whereby he has paid or is to pay to me or to any other person whomsoever for or in respect of or in connection with the purchase by him of the said property any sum of money over and above the said sum of £....., save and except certain charges or payments which fall under or come within one or more of the heads or items of charges or payments mentioned in section six of Transfer Duty Proclamation, 1902. And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to receive, for my use or benefit, or at my instance or request any valuable consideration besides the said sum of £....., save and except in so far as any of the charges above specified, and to be paid by the said C.D., might be held or taken to be payable for me or on my behalf. And I further declare that the only person other than the said C.D. to whom I ever sold the said property or who at any time purchased the said property from me, was E.F., to whom I sold the same on the.....day of....., 19...., for the sum of £..... And I further declare that since the said sale to the said E.F. he has become insolvent, and that the trustee of his insolvent estate has elected to abandon the said sale. And I make this solemn declaration conscientiously believing the same to be true.

Declared before me....., at..... this.....day of..... 19....

Justice of the Peace.

* Where the transaction is a lease, exchange, or donation, the form may be altered accordingly.

FORM "K".

Declaration by Seller of Cancellation.

I, A.B., do solemnly and sincerely declare that I sold to C.D. on theday of....., 19...., the property following, namely:

(Here describe the property.)

for the sum of £....., and I declare that I have never received any sum of money or other valuable consideration on account of the said purchase other than

And I further declare that I have consented and agreed with the said C.D. to cancel by mutual consent the said sale, which sale was on the..... day of....., 19...., cancelled accordingly.

And I further declare that I have not received, nor am I to receive from nor have I given, nor am I to give to the said C.D., or any other person, any money or other valuable consideration for or in reference to the cancellation of the said sale other than as above stated.

And I make this solemn declaration conscientiously believing the same to be true.

Declared before me at....., this.....day of 19....

Justice of the Peace.

FORM "L".

Declaration by Purchaser of Cancellation.

I, C.D., do solemnly and sincerely declare that I bought from A.B. on the day of....., 19...., the following property, namely (here describe the property) for the sum of £....., and I declare that I have never given to the said A.B. any sum of money or other valuable consideration on account of the said purchase other than

And I further declare that I have applied to the said A.B. to consent to cancel the sale, which sale has accordingly been cancelled by mutual consent.

And I further declare that I have not given or received, nor am I to give or receive, nor has any person on my behalf to my knowledge given or received, nor is any person to my knowledge to give or receive any money or other valuable consideration for or in reference to the cancellation of the said sale other than as above stated.

And I make this solemn declaration conscientiously believing the same to be true.

Declared before me at....., this.....day of 19....

Justice of the Peace.

FORM "M".

Declaration of Seller when Agent accepts Sale for Himself.

I, A.B., do solemnly and sincerely declare that I sold to C.D., as the agent or alleged agent of E.F., on the.....day of....., 19...., and not before, the property following, namely: (here describe the property) for the sum of £..... And I declare that the said E.F. has declined to accept the property, and that the said C.D. has signified his willingness to take the same to and for his own individual account for the said sum of £....., neither more nor less. And I further declare that there is not any agreement, condition, or understanding between me and the said C.D. whereby he has paid, or is to pay to me, or to any other person whomsoever for, or in respect of, or in connection with the purchase by him of the said property, any sum of money over and above the said sum of £..... save and except certain charges or payments which fall under or come within

one or more of the heads or items of charges or payments mentioned in section six of the Transfer Duty Proclamation, 1902. And I further declare that I have not received, and that I am not to receive, nor has any other person received, nor is any other person to receive for my use or benefit, or at my instance or request, any valuable consideration besides the said sum of £....., save and except in so far as any of the charges above specified, and to be paid by the said C.D., might be held or taken to be payable for me or in my behalf. And I further declare that the said C.D., as the agent or alleged agent of the said E.F., is the only person who has ever purchased the said property, and that I never sold the same to any other person than in manner aforesaid to the said C.D., who, with my consent, and by virtue of the Proclamation in that behalf provided takes over the property aforesaid as his own.

And I make this solemn declaration conscientiously believing the same to be true.

A.B.....

Declared before me at....., this.....day of
....., 19....

.....
Justice of the Peace.

(Where the agent has accepted a lease the form may be altered accordingly.)

[FORM " N " .

Declaration of Purchaser by Agent who accepts the Sale for Himself.*

I, C.D., do solemnly and sincerely declare that I did in the name of E.F. purchase from A.B. on theday of....., 19...., and not before, the property following, namely: (here describe the property) for the sum of £..... And I further declare that the said E.F. has declined to accept the said property, and that the said A.B. has consented and agreed that I shall take over the said property as the purchaser thereof for the sum of £..... And I further declare that I have not, nor has any person to my knowledge on my account, given, nor is there, by me or on my behalf, to be given any other valuable consideration of any kind whatever for or in respect of, the alienation to me of the said property, save and except certain charges or payments which fall under or come within some one or more of the heads or items of charges or payments mentioned in section six of the Transfer Duty Proclamation, 1902.

And I make this solemn declaration conscientiously believing the same to be true.

C.D.....

Declared before me at....., this.....day of
....., 19....

.....
Justice of the Peace.

* Where the agent has accepted a lease the form may be altered accordingly.

† PROCLAMATION No. 9 OF 1902.

Proclamation
(Trans.) No. 9
of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 8th February, 1902.)

SCHOOL COMMITTEES.

WHEREAS owing to the change in the Government of this Colony the provisions of the Law in respect of the constitution of Committees of Management of Schools subsidized by the late Government of the Transvaal cannot be complied with :

Preamble.

And whereas it is desirable to bring all such schools under the control of the Director of Education :

Now, therefore, by virtue of the authority in me vested, I do hereby proclaim, declare, and make known as follows:—

1. All Committees of Management of Schools subsidized by the late Government of the Transvaal and hereinafter described as “School Committees” established under Law No. 8 of 1892, or any amending law, shall from and after the taking effect of this Proclamation cease to exist.

Abolition of
former
committees of
management.

2. All immovable property vested in any such School Committee whether registered in the name of the Committee or the members thereof, or in the name of the chairman or any other official or officials of the committee, shall from and after this date become vested in the Director of Education for the Transvaal subject to all existing conventional or tacit mortgages thereon in trust for educational purposes in connection with the town, village or district in which such immovable property is situate.

Vesting of
immovable
property in
Director of
Education.

3. The Registrar of Deeds shall after the taking effect of this Proclamation cause all such property as aforesaid to be transferred free of transfer duty, stamps and any other charges to the Director of Education for the Transvaal in trust as aforesaid, and without requiring the consent of any mortgagee to whom any such property is mortgaged.

Transfer in
deeds
registry, free
of duty, etc.

4. It shall be lawful for the Director of Education with the approval of the Administrator of the Transvaal to sell, transfer, exchange or otherwise deal with such property in any manner whatsoever: Provided only that such property or the proceeds of sale thereof shall be held upon trust as above mentioned.

Powers of sale
and transfer.

5. All movable property vested in any such committee as aforesaid shall from and after the taking effect of this Proclamation vest in the said Director of Education upon trust for educational purposes in connection with the school or schools formerly under the management or control of such committee and the said Director of Education is hereby

Vesting of
movables in
Director of
Education.

* See Act No. 25 of 1907.

authorized to do all things and to bring all such actions-at-law as may be necessary to obtain possession of such movable property.

Debts to be
paid by
Treasury.

6. All debts incurred by any such School Committee as aforesaid within the scope of their authority and for which they are liable in law shall be paid out of the Colonial Treasury.

Refund of
private
contributions.

7. Any person who has contributed towards the purchase of any land or towards the cost of erecting or repairing school buildings vested in any such committee as aforesaid shall be entitled, on giving proof to the satisfaction of the Controller of the Treasury of the amount of his contribution, to have the same refunded to him out of the Colonial Treasury.

PROCLAMATION No. 11 OF 1902.

Proclamation
(Trans.) No.
11 of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR.

(Dated 14th March, 1902.)

TO CONSOLIDATE, AMEND, AND DECLARE THE LAW RELATING
TO BILLS OF EXCHANGE, CHEQUES, AND PROMISSORY NOTES.By virtue of the authority in me vested I do hereby declare,
proclaim, and make known as follows:—

PART I.

PRELIMINARY.

1. In this Proclamation unless the context otherwise requires Interpreta-
tion of terms.“acceptance” means an acceptance completed by delivery
or notification;“action” includes a counter claim, claim in reconven-
tion, and set off;“banker” means a body of persons, whether incorpo-
rated or not, who carry on the business of banking;“bearer” means the person in possession of a bill or note
which is payable to bearer;

“bill” means bill of exchange; and.

“note” means promissory note;

“to note” is to make a notarial minute in accustomed
form of the circumstances of dishonour and at the
time of dishonour of a bill or note;“delivery” means transfer of possession, actual or
constructive, from one person to another;“holder” means the payee or endorsee of a bill or note
who is in possession of it or the bearer thereof;“indorsement” means an indorsement completed by
delivery;“issue” means the first delivery of a bill or note complete
in form to a person who takes it as a holder;“person” includes a body of persons whether incorporated
or not;

“value” means valuable consideration;

“written” includes printed; and

“writing” includes print.

“non-business days” include **Sunday and any day
appointed by any law or by the Lieutenant-Governor
under the authority of any law as a solemn fast or
day of thanksgiving or as a public holiday;*“payment in due course” means payment made at or
after the maturity of a bill to the holder thereof in
good faith and without notice that his title to the
bill is defective;

“month” means calendar month.

* As amended by Ord. No. 37 of 1903, sec. 4.

. PART II.

BILLS OF EXCHANGE.—FORM AND INTERPRETATION.

Bill of exchange defined.

2. (1) A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person, or to bearer.

(2) An instrument which does not comply with these conditions or which orders any act to be done in addition to the payment of money is not a bill of exchange.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section, but an unqualified order to pay coupled with

(a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount; or

(b) a statement of the transaction which gives rise to the bill; or

(c) a statement on the bill that it is drawn against specified documents attached thereto for delivery or acceptance or on payment of the bill as the case may be; or

(d) a statement on the bill that it is drawn under or against a specified letter of credit or other similar authority

is unconditional.

(4) A bill is not invalid by reason

(a) that it is not dated;

(b) that it does not specify the value given or that any value has been given therefor;

(c) that it does not specify the place where it is drawn or the place where it is payable.

Effect where different parties to the bill are the same person.

3. (1) A bill may be drawn payable to or to the order of the drawer; or it may be drawn payable to or to the order of the drawee.

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument at his option either as a bill of exchange or as a promissory note.

Address to drawee.

4. (1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

Certainty required as to payee.

5. (1) Where a bill is not payable to bearer the payee must be named or otherwise indicated therein with reasonable certainty.

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3) Where the payee is a fictitious or non-existing person, or a person not having capacity to contract, the bill may be treated as payable to bearer.

6. (1) When a bill contains words prohibiting transfer or indicating an intention that it should not be transferable it is valid as between the parties thereto, but is not negotiable. What bills are negotiable.

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

(4) A bill is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5) Where a bill either originally or by indorsement is expressed to be payable to the order of a specified person and not to him or his order it is nevertheless payable to him or his order at his option.

7. (1) The sum payable by a bill is a sum certain within the meaning of this Proclamation although it is required to be paid Sum payable.

(a) with interest;

(b) by stated instalments;

(c) by stated instalments with a provision that upon default in payment of any instalment the whole shall become due;

(d) according to an indicated rate of exchange to be ascertained as directed by the bill.

(2) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two the sum denoted by the words is the amount payable.

(3) Where a bill is expressed to be payable with interest unless the instrument otherwise provides interest runs from the date of the bill, and if the bill is undated from the issue thereof.

8. (1) A bill is payable on demand

(a) which is expressed to be payable on demand or at sight, or on presentation; or Bill payable on demand.

(b) in which no time for payment is expressed.

(2) Where a bill is accepted or indorsed when it is overdue it shall, as regards the acceptor who so accepts or any indorser who so indorses it, be deemed a bill payable on demand.

9. A bill is payable at a determinable future time within the meaning of this Proclamation, which is expressed to be payable Bill payable at a future time.

(1) at a fixed period after date or sight;

(2) on or at a fixed period after the occurrence of a specified event which is certain to happen though the time of happening may be uncertain. An instrument expressed to be payable on or after the occurrence of a specified event which may or may not happen is not a bill, and the happening of the event does not cure the defect.

Omission of date in bill payable after date.

10. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill, payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly; provided that

(1) where the holder in good faith and by mistake inserts a wrong date; and

(2) in every case where a wrong date is inserted if the bill subsequently comes into the hands of a holder in due course

the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

Antedating and post-dating.

11. (1) Where a bill or an acceptance or any indorsement on a bill is dated the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance or indorsement as the case may be.

(2) A bill is not invalid by reason only that it is antedated or postdated, or that it bears date on a Sunday.

Computation of time of payment.

12. Where a bill is not payable on demand the day on which it falls due is determined as follows:—

(1) If the date on which any bill would fall due shall be a non-business day the due date of the bill shall be the next business day.

* (2) There are no days of grace in this Colony.

(3) Where a bill is payable at a fixed period after date after sight or after the happening of a specified event the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

(4) Where a bill is payable at a fixed period after sight the time begins to run from the date of the acceptance if the bill be accepted and from the date of noting or protest if the bill be noted or protested for non-acceptance or for non-delivery.

Case of need.

13. The drawer of a bill or any indorser may insert therein the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

Optional stipulations by drawer or indorser.

14. The drawer of a bill and any indorser may insert therein an express stipulation

(1) negating or limiting his own liability to the holder; (2) waiving as regards himself some or all of the holder's duties.

* By Trans. Proc. No. 13 of 1902, this sub-section is only to apply to bills of exchange and promissory notes drawn or made on and after the 15th April, 1902.

15. (1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

Definition and requisites of acceptance.

(2) An acceptance is invalid unless it complies with the following conditions, namely:—

(a) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.

(b) It must not express that the drawee will perform his promise by any other means than the payment of money.

16. A bill may be accepted

Time for acceptance.

(1) before it has been signed by the drawer or while otherwise incomplete;

(2) when it is overdue or after it has been dishonoured by a previous refusal to accept, or by non-payment;

(3) when a bill payable after sight is dishonoured by non-acceptance and the drawee subsequently accepts it the holder in the absence of any different agreement is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

17. (1) An acceptance is either

General and qualified acceptances.

(a) general; or (b) qualified.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. In particular an acceptance is qualified which is

(a) conditional: that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;

(b) partial: that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(c) local: that is to say, an acceptance to pay only at a particular specified place;

An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere;

(d) qualified as to time;

(e) the acceptance of some one or more of the drawees but not of all.

18. (1) Where a simple signature on a blank paper to which a stamp has been affixed by the signer is delivered by him in order that it may be converted into a bill it operates as a prima facie authority to fill it up as a complete bill for any amount such stamp will cover using the signature for that of the drawer or the acceptor or an indorser; and in like manner when a bill is wanting in any material particular the person in possession of it has a prima facie authority to fill up the omission in any way he thinks fit.

Inchoate instruments.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within the time agreed on, or if no time be agreed on then within a

reasonable time and strictly in accordance with the authority given. Reasonable time for *this*† purpose is a question of fact:

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

Delivery.

19. (1) Every contract on a bill whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable until delivery of the instrument in order to give effect thereto:

Provided that where an acceptance is written on a bill and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it the acceptance then becomes complete and irrevocable.

(2) As between immediate parties and as regards a remote party other than a holder in due course the delivery

(a) in order to be effectual must be made either by or under the authority of the party drawing, accepting or indorsing, as the case may be;

(b) may be shown to have been conditional or for a special purpose only and not for the purpose of transferring the property in the bill. But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3) Will be no longer in the possession of a party who has signed it as a drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

CAPACITY AND AUTHORITY OF PARTIES.

Capacity of parties.

20. (1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract; provided that to the validity of a bill accepted or indorsed by a woman the renunciation of the benefits *senatus consultum velleianum* and *authentica si qua mulier* shall not be requisite.

(2) Where a bill is drawn or indorsed by an infant or minor or corporation having no capacity or power to incur liability on a bill the drawing or indorsement entitles the holder to receive payment of the bill and to enforce it against any other party thereto.

Signature essential to liability.

21. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such; provided that

(1) where a person signs a bill in a trade or assumed name he is liable thereon as if he had signed it in his own name;

(2) the signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners of that firm.

† Word in italics is given as "the" in Proc. 1900-1902, but see *Gazette*.

22. Subject to the provisions of this Proclamation where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be the forged or unauthorized signature is wholly inoperative, and no right to retain the bill, or to give a discharge therefor, or to enforce payment thereof against any party thereto can be acquired through or under that signature unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority; provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to forgery.

Forged and unauthorized signatures.

23. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

Procuration signature.

24. (1) Where a person signs a bill as drawer, indorser or acceptor and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is* not personally liable thereon; provided that if such person had no authority to sign for and on behalf of such principal or in a representative character he shall be personally liable on the said bill.

Persons signing as agent or in representative capacity.

(2) In determining whether a signature on a bill is that of a principal or that of the agent by whose hand it is written the construction most favourable to the validity of the instrument shall be adopted.

THE CONSIDERATION OF A BILL.

25. (1) Valuable consideration for a bill may be constituted by

Value and holder for value.

(a) any cause sufficient to support an action founded on contract or agreement;

(b) an antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3) Where the holder of a bill has a lien on it arising either from contract or by implication of law he is deemed to be a holder for value to the extent of the sum for which he has a lien.

26. (1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser without receiving value therefor, and for the purpose of lending his name to some other person.

Accommodation bill or party.

(2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether when such holder took the bill he knew such party to be an accommodation party or not.

* In Pr. 1900-1902 this word reads "he"; it should be "is"; see *Gazette*.

Holder in due course.

27. (1) A holder in due course is a holder who has taken a bill complete and regular on the face of it under the following conditions, namely:—

(a) That he became the holder of it before it was overdue, and without notice that it had previously been dishonoured if such was the fact.

(b) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular the title of a person who negotiates a bill is defective within the meaning of this Proclamation when he obtained the bill or the acceptance thereof by fraud or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to fraud.

(3) A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Presumption of value and good faith.

28. (1) Every party whose signature appears on a bill is prima facie deemed to have become a party thereto for value.

(2) Every holder of a bill is prima facie deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation, of the bill is affected with fraud or illegality the burden of proof is shifted unless and until the holder proves that subsequent to the alleged fraud or illegality value has in good faith been given for the bill.

NEGOTIATION OF BILLS.

Negotiation of bill.

29. (1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4) When the holder of a bill payable to his order transfers it for value without indorsing it the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5) When any person is under obligation to indorse a bill in a representative capacity he may indorse the bill in such terms as to negative personal liability.

Requisites of a valid indorsement.

30. An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—

(1) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill without additional words is sufficient.

An indorsement written on the allonge or on a "copy" of a bill issued or negotiated in a country where copies are recognized is deemed to be written on the bill itself.

(2) It must be an indorsement of the entire bill. A partial indorsement (that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally) does not operate as a negotiation of the bill.

(3) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse unless the one indorsing has authority to indorse for the others.

(4) Where in a bill payable to order the payee or indorsee is wrongly designated or his name is mis-spelt, he shall indorse the bill as therein described, adding his proper signature.

(5) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill until the contrary is proved.

(6) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

31. Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

Conditional indorsement.

32. (1) An indorsement in blank specifies no indorsee and a bill so indorsed becomes payable to bearer.

Indorsement in blank and special indorsement.

(2) A special indorsement specifies the person to whom or to whose order the bill is to be payable.

(3) The provisions of this Proclamation relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

33. (1) An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as for example, if a bill be indorsed "Pay D only," or "Pay D for the account of X," or "Pay D or order for collection."

Restrictive indorsement.

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorize him to do so.

(3) Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

Negotiation
of overdue or
dishonoured
bill.

34. (1) Where a bill is negotiable in its origin it continues to be negotiable until it has been

- (a) restrictively indorsed; or
- (b) discharged by payment or otherwise.

(2) Where an overdue bill is negotiated it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is prima facie deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour; but nothing in this sub-section shall affect the rights of a holder in due course.

Negotiation
of bill to
party already
liable thereon.

35. Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of this Proclamation, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Rights of the
holder.

36. The rights and powers of the holder of the bill are as follows:—

- (1) He may sue on the bill in his own name.
- (2) Where he is a holder in due course he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill.
- (3) Where the title is defective
 - (a) if he negotiates the bill to a holder in due course that holder obtains a good and complete title to the bill; and
 - (b) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

GENERAL DUTIES OF THE HOLDER.

When
presentment
for acceptance
is necessary.

37. (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4) Where the holder of a bill drawn payable elsewhere than at the place of business or residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

38. (1) Subject to the provisions of this Proclamation, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

Time for presenting bill payable after sight.

(2) If he do not do so the drawer and all indorsers prior to that holder are discharged.

(3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills and the facts of the particular case.

39. (1) A bill is duly presented for acceptance which is presented in accordance with the following rules:—

Rules as to presentment for acceptance and excuses for non-presentment.

(a) The presentment must be made by or on behalf of the holder to the drawee, or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day, and before the bill is overdue.

(b) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all unless one has authority to accept for all, then presentment may be made to him only.

(c) Where the drawee is dead presentment may be made to his executor.

(d) Where the drawee is insolvent or has assigned his estate, presentment may be made to him or his trustee or assignee.

(e) A presentment through the post office, if in due course, is sufficient.

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance

(a) where the drawee is dead, or insolvent, or is a fictitious person, or a person not having capacity to contract by bill;

(b) where after the exercise of reasonable diligence such presentment cannot be effected;

(c) where although the presentment has been irregular acceptance has been refused on some other ground.

(3) The fact that the holder has reason to believe that the bill on presentment will be dishonoured does not excuse presentment.

Non-acceptance.

40. When a bill is duly presented for acceptance and it is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not the holder shall lose his right of recourse against the drawer and indorsers.

Dishonour by non-acceptance and its consequences.

41. (1) A bill is dishonoured by non-acceptance
(a) when it is duly presented for acceptance and such an acceptance as is prescribed by this Proclamation is refused or cannot be obtained; or
(b) when presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this Proclamation, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

Duties as to qualified acceptances.

42. (1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2) Where a qualified acceptance is taken and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance whereof due notice has been given. Where a bill has been accepted as to part, it must be protested as to the balance.

(3) When a drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

Rules as to presentment for payment.

43. Subject to the provisions of this Proclamation, a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged. A bill is duly presented for payment which is presented in accordance with the following rules:—

(1) Where the bill is not payable on demand presentment must be made on the day it falls due.

(2) Where the bill is payable on demand, then subject to the provisions of this Proclamation presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement in order to render an indorser liable. In determining what is a reasonable time regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(3) Presentment must be made by the holder, or by some person authorized to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer or to some person authorized to pay or refuse payment on his behalf, if with the exercise of reasonable diligence such person can there be found.

- (4) A bill is presented at the proper place
- (a) where a place of payment is specified in the bill and the bill is there presented;
- (b) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill and the bill is there presented;
- (c) where no place of payment is specified, and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not at his ordinary residence if known;
- (d) in any other case, if presented to the drawee or acceptor whenever he can be found, or if presented at his last known place of business or residence.
- (5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.
- (6) Where a bill is drawn upon or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.
- (7) Where the drawee or acceptor of a bill is dead and no place of payment is specified, presentment must be made to his executor if such there be, and with the exercise of reasonable diligence he can be found.
- (8) A presentment through the post office, if in due course, is sufficient.

44. (1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

Excuses for delay or non-presentment for payment.

- (2) Presentment for payment is dispensed with
- (a) where after the exercise of reasonable diligence presentment as required by this Proclamation cannot be effected. The fact that the holder has reason to believe that the bill will on presentment be dishonoured does not dispense with the necessity for presentment;
- (b) where the drawee is a fictitious person;
- (c) as regards the drawer where the drawee or acceptor is not bound as between himself and the drawer to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;
- (d) as regards an indorser where the bill was accepted or made for the accommodation of that indorser and he has no reason to expect that the bill would be paid if presented;
- (e) by waiver of presentment, express, or implied;
- (f) where the drawee or acceptor is insolvent, or has assigned his estate.

45. (1) A bill is dishonoured by non-payment

Dishonour by non-payment.

(a) when it is duly presented for payment and payment is refused or cannot be obtained; or

(b) when presentment is excused and the bill is overdue and unpaid.

(2) Subject to the provisions of this Proclamation, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

Notice of dishonour and effect of non-notice.

46. Subject to the provisions of this Proclamation, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each endorser, and any drawer or endorser to whom such notice is not given is discharged; provided that

(1) where a bill is dishonoured by non-acceptance and notice of dishonour is not given, the rights of a holder in due course, subsequent to the omission, shall not be prejudiced by the omission;

(2) where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall in the meantime have been accepted.

Rules as to notice of dishonour.

47. Notice of dishonour, in order to be valid and effectual, must be given in accordance with the following rules:—

(1) The notice must be given by or on behalf of the holder, or by or on behalf of the indorser, who at the time of giving it is himself liable on the bill.

(2) Notice of dishonour may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

(3) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(4) Where notice is given by or on behalf of an indorser entitled to give notice, as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(5) The notice may be given in writing, or by personal communication, and may be given in any terms which sufficiently identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment.

(6) The return of a dishonoured bill to the drawer or an indorser is in point of form deemed a sufficient notice of dishonour.

(7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A mis-description of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

(8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself or to his agent in that behalf.

(9) Where the drawer or indorser is dead and the party giving notice knows it, the notice must be given to an executor, if such there be, and with the exercise of reasonable diligence he can be found.

(10) Where the drawer or indorser is insolvent, notice may be given either to the person himself or to the person in whom his estate is by law vested.

(11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them unless one of them has authority to receive such notice for the others.

(12) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter. In the absence of special circumstances notice is not deemed to have been given within a reasonable time unless—

(a) where the person giving and the person to receive notice reside in **the same place*, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill;

(b) where the person giving and the person to receive notice reside in different places, the notice is sent off on the business day next after the dishonour of the bill if there be a post at a convenient hour on that day; and if there be no such post on that day then by the next post thereafter.

(13) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill or he may give notice to his principal. If he give notice to his principal he must do so within the same time as if he were the holder and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

(14) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after dishonour.

(15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour notwithstanding any miscarriage by the post office.

48. (1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

Excuses for non-notice and delay.

(2) Notice of dishonour is dispensed with

(a) when after the exercise of reasonable diligence notice as required by this Proclamation can not be given to or does not reach the drawer or indorser sought to be charged;

* Words in italics given in Pr. 1900-1902 as "different places"; see, however, *Gazette*.

(b) by waiver expressed or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice;

(c) as regards the drawer in the following cases, namely—

(1) where drawer and drawee are the same person;

(2) where the drawee is a fictitious person or a person not having capacity to contract;

(3) where the drawer is the person to whom the bill is presented for payment;

(4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill;

(5) where the drawer has countermanded payment;

(d) as regards the indorser in the following cases, namely—

(1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill;

(2) where the indorser is the person to whom the bill is presented for payment;

(3) where the bill was accepted or made for his accommodation.

Noting or
protest of bill.

49. (1) Where a bill has been dishonoured by non-acceptance, it must be duly protested for non-acceptance, and where a bill which has not been previously dishonoured by non-acceptance is dishonoured by non-payment, it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged, with the exception of the drawer or payee of a cheque on a banker as hereinafter defined.

(2) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(3) Subject to the provisions of this Proclamation, when a bill is noted or protested it must be noted on the day of its dishonour. When a bill has been duly noted the protest may be subsequently extended as of the date of the noting.

(4) Where the acceptor of a bill becomes insolvent or assigns his estate or suspends payment before it matures the holder may cause the bill to be protested for better security against the drawer and indorsers.

(5) A bill must be protested at the place where it is dishonoured: Provided that

(a) when a bill is *presented** through the post office and returned by post dishonoured it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours then not later than the next business day;

(b) when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonoured by non-acceptance it must, if protested, be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to or demand on the drawee is necessary.

* Word in italics substituted by Ord. No. 4 of 1904, sec. 1.

(6) A protest must contain a copy of the bill and must be signed by the notary making it, and must specify

- (a) the person at whose request the bill is protested;
- (b) the place and date of protest, the cause or reason for protesting the bill, the demand made and the answer given (if any), or the fact that the drawee or acceptor could not be found.

(7) Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it protest may be made on a copy or written particulars thereof.

(8) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested, when necessary, with reasonable diligence.

50. (1) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

Duties of holder as regards drawee or acceptor.

(2) When by the terms of a qualified acceptance presentment for payment is required the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3) In order to render the acceptor of a bill liable it is not necessary to protest it or that notice of dishonour should be given to him.

(4) Where a holder of a bill presents it for payment he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

LIABILITIES OF PARTIES.

51. A bill of itself does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Proclamation is not liable on the instrument.

Funds in hand of drawee.

52. The acceptor of a bill by accepting it

Liability of acceptor.

(1) engages that he will pay it according to the tenor of his acceptance;

(2) is precluded from denying to a holder in due course

(a) the existence of the drawer, the genuineness of his signature and his capacity and authority to draw the bill;

(b) in the case of a bill payable to drawer's order the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(c) in the case of a bill payable to the order of a third person the existence of the payee and his then capacity to indorse, but not the genuineness or the validity of his indorsement.

Liability of
drawer or
indorser.

53. (1) The drawer of a bill by drawing it
(a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2) The indorser of a bill by indorsing it

(a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(b) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;

(c) is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

Stranger
signing a bill
liable as
indorser.

54. Where a person signs a bill otherwise than as drawer or acceptor he or she thereby incurs the liabilities of an indorser to a holder in due course.

Measure of
damages
against
parties to
dishonoured
bill.

55. Where a bill is dishonoured the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:—

(1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer or from a prior indorser—

(a) the amount of the bill;

(b) interest thereon in accordance with the stipulation (if any) in the bill, or from the time of presentment for payment if the bill is payable on demand, or from the maturity of the bill in any other case;

(c) the expenses of noting, and where the protest has been extended the expenses of the protest.

(2) In the case of a bill which has been dishonoured abroad in lieu of the above damages the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange, with interest thereon until the time of payment.

(3) Where by this Proclamation interest may be recovered as damages such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate interest as damages may or may not be given at the same rate as interest proper.

56. (1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it he is called a transferor by delivery.

Transferor
by delivery
and
transferec.

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee, being a holder for value, that the bill is what it purports to be, that he has a right to transfer it and that at the time of transfer he is not aware of any fact which renders it valueless.

DISCHARGE OF BILL.

57. (1) A bill is discharged by payment in due course or *pro tanto* by payment of part notified by indorsement on the bill if such payment be made by or on behalf of the drawee or acceptor.

Payment in
due course.

(2) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged; but

(a) where a bill payable to or to the order of a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill;

(b) where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements and again negotiate the bill.

(3) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

58. When a bill payable to order on demand is drawn on a banker and the banker pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority. Provided such indorsement does not purport to be that of a person who is a customer of the banker at the branch on which the said bill is drawn.

Banker
paying
demand
draft where
indorsement
is forged.

59. When the acceptor of a bill is or becomes the holder of it at or after its maturity in his own right the bill is discharged.

Acceptor the
holder at
maturity.

60. (1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged. The renunciation must be in writing on the bill unless the bill is delivered up to the acceptor.

Express
waiver.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

Cancellation.

61. (1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled is also discharged.

(3) A cancellation made unintentionally or under a mistake or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally or under a mistake or without authority.

Alteration of bill.

62. (1) Where a bill or acceptance is materially altered then the liability of all parties who were parties to the bill at the date of alteration and who did not assent to it must be regarded as if the alteration had not been made; but any party who has himself made, authorized, or assented to the alteration and all subsequent indorsers are liable on the bill as altered.

(2) Amongst material alterations are the following:—Any alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally the addition of a place of payment, without the acceptor's assent.

ACCEPTANCE AND PAYMENT FOR HONOUR.

Acceptance for honour *supra* protest.

63. (1) Where a bill of exchange has been protested for dishonour by non-acceptance or protested for better security and is not overdue, any person, not being a party already liable thereon, may with the consent of the holder intervene and accept the bill *supra* protest for the honour of any party liable thereon or for the honour of the person for whose account the bill is drawn.

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3) An acceptance for honour *supra* protest in order to be valid must

(a) be written on the bill and indicate that it is an acceptance for honour;

(b) be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for whose honour it is made it is deemed to be an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour its maturity is calculated from the date of noting for non-acceptance and not from the date of acceptance for honour.

64. (1) The acceptor for honour of a bill by accepting it engages that he will on due presentment pay the bill according to the tenor of his acceptance if it is not paid by the drawee, provided it has been duly presented for payment and protested for non-payment and that he receives notice of these facts.

Liability of acceptor for honour.

(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

65. (1) Where a dishonoured bill has been accepted for honour *supra* protest or contains a reference in case of need it must be protested for non-payment before it is presented for payment to the acceptor for honour or referee in case of need.

Presentment to acceptor for honour.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment the bill must be posted or forwarded for presentment not later than the business day next following its maturity for presentment to him.

(3) Delay in presentment or non-presentment is excused by any circumstances which would excuse delay in presentment for payment or non-presentment for payment.

(4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

66. (1) Where a bill has been protested for non-payment any person, not being a party already liable thereon, may intervene and pay it *supra* protest for the honour of any party liable thereon or for the honour of the person for whose account the bill is drawn.

Payment for honour *supra* protest.

(2) Where two or more persons offer to pay a bill for the honour of different parties the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honour *supra* protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it.

(4) The notarial act of honour must be founded on a declaration made by the payer for honour or his agent in that behalf, declaring his intention to pay the bill for honour and for whose honour he pays.

(5) Where a bill has been paid for honour all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is substituted for and succeeds to both the rights and duties of the holder as regards the party for whose honour he pays and all parties liable to that party.

(6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7) Where the holder of a bill refuses to receive payment *supra* protest he shall lose his right of recourse against any party who would have been discharged by such payment.

LOST INSTRUMENTS.

Holder's
rights to
duplicate of
lost bill.

67. Where a bill has been lost before it is overdue the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving adequate security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill he may be compelled to do so.

Action on
lost bill.

68. In any action or proceeding upon a bill other than a proceeding for provisional sentence the court or a judge may order that the loss or non-production of the instrument shall not be set up by way of defence, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

BILL IN A SET.

Rules as to
set.

69. (1) Where a bill is drawn in a set, each part of a set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

(2) Where a holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders, in due course he is liable on every such part as if it were a separate bill.

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course he is liable to the holder thereof.

(6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

CONFLICT OF LAWS.

Rules where
laws conflict.

70. Where a bill drawn in one country, Colony, or State is negotiated, accepted, or payable in another the rights, duties, and liabilities of the parties thereto are determined as follows:—

(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of every supervening contract sued as acceptance or indorsement or acceptance *supra* protest is determined by the law of the place where such contract was made. Provided

(a) where a bill is issued out of this Colony it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;

(b) where a bill issued out of this Colony conforms as regards requisites in form to the law of the Colony it may for purpose of enforcing payment thereof be treated as valid as between all persons who negotiate, hold, or become parties to it in this Colony.

(2) Subject to the provisions of this Proclamation the interpretation of the contract of the drawer, indorser, acceptor, or acceptor *supra* protest of a bill is determined by the law of the place where such contract is made:

Provided that where a bill drawn and payable in this Colony is indorsed elsewhere the indorsement shall as regards the payer be interpreted according to the law of this Colony.

(3) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour or otherwise are determined by the law of the place where the act is done or the bill is dishonoured.

(4) Where a bill is drawn out of but payable in this Colony and the sum payable is not expressed in currency of this Colony the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

(5) Where a bill is drawn in one country, Colony, or State and is payable in another the due date thereof is determined according to the law of the place where it is payable.

PART III.

CHEQUES ON A BANKER.

71. A cheque is a bill of exchange drawn on a banker payable on demand. Except as otherwise provided in this part the provisions of this Proclamation applicable to a bill of exchange payable on demand apply to a cheque.

Cheque defined.

72. Subject to the provisions of this Proclamation—

(1) Where a cheque is not presented for payment within a reasonable time of its issue and the drawer or person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage; that

Presentment of cheque for payment.

is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.

(2) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of such cheque as to which such drawer or person is discharged shall be a creditor in lieu of such drawer or person of such banker to the extent of such discharge and entitled to recover the amount from him.

Revocation of
banker's
authority.

73. The duty and authority of a banker to pay a cheque on him by his customer are determined by

- (1) countermand of payment;
- (2) notice of the customer's death;
- (3) notice of the customer having become insolvent.

CROSSED CHEQUES.

General and
special
crossings
defined.

74. (1) Where a cheque bears across its face an addition of

- (a) the words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or
- (b) two parallel transverse lines simply, either with or without the words "not negotiable"

that addition constitutes a crossing and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker either with or without the words "not negotiable" that addition constitutes a crossing and the cheque is crossed specially and to that banker.

Crossings by
drawer or
after issue.

75. (1) A cheque may be crossed generally or specially by the drawer.

(2) Where a cheque is uncrossed the holder may cross it generally or specially.

(3) Where a cheque is crossed generally the holder may cross it specially.

(4) Where a cheque is crossed specially or generally the holder may add the words "not negotiable".

(5) Where the cheque is crossed specially the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed cheque or a cheque crossed generally is sent to a banker for collection he may cross it specially to himself.

Crossing a
material part
of cheque.

76. A crossing authorized by this Proclamation is a material part of the cheque; it shall not be lawful for any person to obliterate or except as authorized by this Proclamation to add to or alter the crossing.

Duties of
bankers as to
crossed
cheques.

77. (1) Where a cheque is crossed generally the banker on whom it is drawn shall not pay it otherwise than to a banker.

(2) Where a cheque is crossed specially the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed or to his agent for collection being a banker.

(3) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker the banker on whom it is drawn shall refuse payment thereof.

(4) Where the banker on whom the cheque is drawn which is so crossed nevertheless pays the same or pays a cheque crossed generally otherwise than to a banker or if crossed specially otherwise than to the banker to whom it is crossed or his agent for collection being a banker he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid :

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed or to have had a crossing which has been obliterated or to have been added to or altered otherwise than as authorized by this Proclamation, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Proclamation, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed or to his agent for collection being a banker, as the case may be.

78. Where the banker on whom a crossed cheque is drawn in good faith and without negligence pays it if crossed generally to a banker and if crossed specially to the banker to whom it is crossed or his agent for collection being a banker, the banker paying the cheque, and if the cheque has come into the hands of the payee the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Protection to banker and drawer where cheque is crossed.

79. Where a person takes a crossed cheque which bears on it the words "not negotiable", he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Effect of crossing on holder.

80. Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

Protection to collecting banker.

81. Sections *seventy-four* to *eighty* of this Proclamation shall extend to any document issued by a customer of any banker and intended to enable any person to obtain payment on demand from such banker of the sum mentioned in such document and shall so extend in like manner as if the said document were a cheque.

Sections 74 to 80 to extend to documents other than cheques crossed for like object.

Provided that nothing herein contained shall be deemed to render any such document a negotiable instrument.

PART IV.

PROMISSORY NOTES.

Promissory
note defined.

82. (1) A note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

Delivery
necessary.

83. A note is inchoate and incomplete until delivery thereof to the payee or bearer.

Joint and
several notes.

84. (1) A note may be made by two or more makers and they may be liable thereon jointly or jointly and severally according to its tenour.

(2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note, and any note signed by two or more persons is deemed to be their joint and several note in the absence of a contrary intention appearing upon the face of it.

Note payable
on demand.

85. (1) Where a note payable on demand has been indorsed it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2) In determining what is a reasonable time regard shall be had to the nature of the instrument the usage of trade and the facts of the particular case.

(3) Where a note payable on demand is negotiated it is not deemed to be overdue for the purpose of affecting the holder with defects of title of which he had no notice by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

Presentment
of note for
payment.

86. (1) Where a note is in the body of it made payable at a particular place it must be presented for payment at that place in order to render the maker liable unless the particular place mentioned is the place of business of the payee and the note remains in his hands. In any other case presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only presentment at that place is sufficient to render the indorser liable; but a presentment to the maker elsewhere if sufficient in other respects shall also suffice.

87. The maker of a note by making it

(1) engages that he will pay it according to its tenour;

(2) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

Liability of maker.

88. (1) Subject to the provisions in this part and except as by this section provided the provisions of this Proclamation relating to bills of exchange apply with the necessary modifications to notes.

Application of Part II to notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes, namely, the provisions relating to

(a) presentment for acceptance;

(b) acceptance;

(c) acceptance *supra* protest;

(d) bills in a set.

PART V.

SUPPLEMENTARY.

89. A thing is deemed to be done in good faith within the meaning of this Proclamation where it is in fact done honestly whether it is done negligently or not.

Good faith.

90. Where by this Proclamation any instrument or writing is required to be signed by any person it is not necessary that he should sign it with his own hand but it is sufficient if his signature is written thereon by some other person by or under his authority, and the authorized sealing with a corporate seal of a corporation or the authorized stamping with an official stamp of any bank or company shall be deemed to be sufficient and equivalent to signature or indorsement of any such instrument or writing.

Signature.

91. Where by this Proclamation the reasonable or other time limited for doing any act or thing is less than four days, in reckoning such time non-business days are excluded.

Computation of time.

92. For the purposes of this Proclamation where a bill or note is required to be protested within a specified time or before some further proceeding is taken it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding, and the formal protest may be extended at any time thereafter as of the date of the noting.

When noting equivalent to protest.

93. Where a dishonoured bill or note is authorized or required to be protested and the services of a notary cannot be obtained at the place where the bill is dishonoured, any landowner or householder of the place may in the presence of two witnesses give a certificate signed by them attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill. The form given in the schedule to this Proclamation may be used with necessary modifications and if used shall be sufficient.

Protest when notary not accessible.

Dividend warrants and coupon for interest may be crossed.

94. The provisions of this Proclamation as to crossed cheques shall apply to a warrant for payment of a dividend to a coupon for payment of interest and to postal or money orders.

Laws not to be affected by this Proclamation.

95. Nothing in this Proclamation shall affect the provisions of or in any way restrict

- (1) the Stamp Laws or any law for the time being in force relating to the revenue;
- (2) Law No. 2 of 1893 relating to banks and any amendment thereof;
- (3) the laws relating to companies;
- (4) the procedure and practice in regard to the granting of provisional sentence in judicial proceedings.

But all other laws inconsistent with the provisions of this Proclamation shall be repealed from and after the taking effect of this Proclamation.

Short title.

96. This Proclamation shall be known and cited as "The Bills of Exchange Proclamation 1902" and shall take effect from and after the fifteenth April next.

SCHEDULE.

FORM OF PROTEST WHICH MAY BE USED WHEN THE SERVICES OF A NOTARY CANNOT BE OBTAINED.

Know all men that I, A.B., landowner or householder of....., in the district of....., Transvaal, at the request of C.D., there being no notary public available, did on the.....day of....., 19...., at....., demand payment (or acceptance) of the bill of exchange hereunder written from E.F., to which demand he made answer (state answer if any) wherefore I now in the presence of G.H. and J.K., do protest the said bill of exchange.

A.B.....

Witnesses :

G.H.....

J.K.....

N.B.—The bill itself should be annexed, or a copy of the bill and all that there is thereon should be underwritten.

*PROCLAMATION No. 12 OF 1902.

Proclamatic
(Trans.) No
12 of 1902.

By HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 19th March, 1902.)

TO AMEND THE LAW RELATING TO STAMP DUTIES.

WHEREAS it is desirable to amend the Law relating to Stamp Duties. Preamble.

Now, therefore, by virtue of the authority in me vested, I do hereby declare, proclaim, and make known as follows:—

1. In this Proclamation, unless the context otherwise requires, the following expressions in inverted commas shall bear the meanings assigned to them:— Definition of terms.

“Governor” means the officer for the time being administering the Government of the Transvaal;

“material” includes every sort of material upon which words or figures can be expressed;

“instrument” includes every written document;

“writing” or “written” includes printing, typewriting, or any process of producing printing or writing;

“stamp” means as well a stamp impressed by means of a die as an adhesive stamp;

“stamped,” with reference to instruments and material, applies as well to instruments and material impressed with stamps by means of a die as to instruments and material having adhesive stamps affixed thereto;

“executed” and “execution,” with reference to instruments not under seal, mean signed and signature;

“money” includes all sums expressed in British or in any foreign or Colonial currency;

“forge” and “forged” include counterfeit and counterfeited;

“duty” means any stamp duty for the time being chargeable by law;

“die” includes any plate, type, tool or implement whatever used in terms of this Proclamation for expressing or denoting any duty or rate of duty or the fact that any duty or rate of duty or penalty has been paid or that an instrument is duly stamped or is not chargeable with any duty, or for denoting any fee, and also any part of any such plate, type, tool, or instrument;

“marketable security” includes any stock, debenture, security, share, or the like, of such description as to be capable of being sold in any share market or exchange in South Africa.

*;See Trans. Proc. No. 26 of 1902, Ords. No. 14 of 1902, No. 40 of 1904, No. 16 of 1905, No. 28 of 1906, Act No. 15 of 1909.

Repeal of laws.

2. The laws specified in the First Schedule of this Proclamation and so much of any other law as may be repugnant to or inconsistent with the provisions thereof are hereby repealed; provided that

(a) all offences against the provisions of such repealed laws may be prosecuted and all fines and penalties incurred or chargeable thereunder may be recovered, in the same way as if there had been no such repeal in any case in which such offence was committed or liability to such fine or penalty incurred prior to the taking effect of this Proclamation;

(b) nothing herein contained shall affect the stamping of any instrument executed prior to the taking effect of this Proclamation.

Appointment of officers.

3. It shall and may be lawful for the Governor from time to time to nominate and appoint such persons as he may think fit, who shall be charged with any or all of the following duties:—

(a) The providing, custody, and management of proper and sufficient dies and materials for impressing or denoting stamp duties;

(b) the making, custody, and management, supply, sale and distribution of stamps required for the purposes of this Proclamation;

(c) the stamping of deeds and the defacing of stamps in accordance with the provisions of this Proclamation.

Regulations for guidance of officers.

4. It shall and may be lawful for the Governor from time to time to make regulations for the due discharge of the duties imposed on distributors of stamps, and for the due accounting for all stamps or moneys received therefor, and from time to time to vary or revoke the same.

Power to make allowance for spoilt stamps.

*5. Subject to such regulations as may from time to time be made by the Governor and to the production of such evidence as the Controller of the Treasury may require, the said controller may in his discretion make an allowance in the following cases to any person tendering stamps that may have been spoilt or rendered unserviceable, namely:—

(a) Where a stamp has been inadvertently and undesignedly spoilt, obliterated, or rendered unserviceable, either before it has been affixed to any instrument, or before any material or instrument on which the stamp has been placed has been executed by any party;

(b) where a stamp has been affixed to any material or instrument which for any reason is not executed by any person or used for the purpose intended;

(c) where a bill of exchange or promissory note signed by or on behalf of the drawer or maker has not been made use of in any manner whatever or delivered out of his hands or tendered for acceptance or endorsement;

* For such regulations see Govt. Notice No. 232 of 1902 (*Gazette*, 13th June, 1902, p. 849).

(d) where an instrument executed by any party thereto has been afterwards found either to be void *ab initio* or to be unfit by reason of any error therein for the purpose originally intended;

(e) where an instrument executed by any party thereto has not been made use of and is insufficient for the purpose for which it was intended, or becomes void either by reason of the inability or the refusal of some necessary party to execute the same or to complete the transaction according to the instrument;

(f) where an instrument executed by any party thereto has been inadvertently and undesignedly spoiled, obliterated, or rendered unserviceable, and in lieu thereof another instrument duly stamped giving effect to the same transaction has been executed.

Provided always

(1) that the application for relief shall be made within six months after the stamp has been spoilt, obliterated or rendered unserviceable, or within such further period as may be prescribed by regulations made from time to time by the Governor;

(2) that the stamp in respect of which allowance is claimed and any instrument or material to which it may have been affixed is given up to the Controller of the Treasury to be destroyed;

(3) that the allowance shall be by giving to the claimant therefor either other stamps or money to the same value as the Controller of the Treasury thinks fit.

6. Where any person inadvertently and undesignedly has used for an instrument liable to duty a stamp of a greater value than was necessary, or has used a stamp for an instrument not liable to any duty, the Controller of the Treasury may upon application, and subject to such instrument (if liable to duty) being duly stamped, make an allowance in respect of such excess or unnecessary stamps, in the same manner and subject to the same provisions as set forth in the preceding section, on the instrument in question being produced to him and such allowance being denoted thereon.

Allowance in case of an instrument being over-stamped.

*7. *The stamp duties specified in the Second Schedule to this Proclamation (as amended by the Stamp Duties Amendment Ordinance 1904 and the Stamp Duties Amendment Ordinance 1905) shall be chargeable in respect of the instruments mentioned in such Schedule as so amended whether such instruments be executed in this Colony or relate to the transfer of any property situate therein or to any matter or thing to be performed or done therein and such Schedule amended as aforesaid shall be deemed to be part of this Proclamation.*

Charge of duties in Schedule.

How duties to be denoted.

* As amended by Ord. No. 28 of 1906, sec. 2. As to exemptions from stamp duty see Ord. No. 57 of 1903, sec. 9 (leases and licenses to settlers); Act No. 33 of 1907, sec. 13 (transfers to Governor and municipal councils); Act No. 34 of 1908, sec. 64 (grant of freehold under Townships Act); Act No. 8 of 1909, sec. 13 (affidavits under Inquests Act); Act No. 36 of 1909, sec. 13 (2) (affidavits under Registration of Businesses Act).

†8. All stamp duties for the time being chargeable by law upon any instruments are to be denoted by adhesive stamps except where other provision is made, and no adhesive stamp shall be available which does not bear on the face of it that it is a revenue stamp.

How instruments are to be written and stamped.

9. (1) Every instrument written upon stamped material is to be written in such manner and every instrument partly or wholly written before being stamped is to be so stamped that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument written upon the same piece of material.

(2) If more than one instrument be written upon the same piece of material every one of the instruments is to be separately and distinctly stamped with the duty with which it is chargeable.

Instruments to be separately charged with duty in certain cases.

10. Except where express provision to the contrary is made by this or any other Proclamation, an instrument containing or relating to several distinct matters is to be separately and distinctly charged as if it were a separate instrument with duty in respect of each of the matters.

Facts and circumstances affecting duty to be set forth in instruments.

11. All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument; and every person who with intent to defraud the revenue

(a) executes any instrument in which all the said facts and circumstances are not fully and truly set forth; or

(b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all the said facts and circumstances; shall incur a fine of fifty pounds.

Mode of calculating *ad valorem* duty in certain cases.

12. (1) Where an instrument is chargeable with *ad valorem* duty in respect of

(a) any money in any foreign or colonial currency; or

(b) any stock or marketable security;

the duty shall be calculated on the value on the day of the date of the instrument of the money in British currency according to the current rate of exchange, or of the stock or security according to the average price thereof on such day.

(2) Where an instrument contains a statement of current rate of exchange or average price, as the case may require, and is stamped in accordance with that statement, it is, so far as regards the subject matter of the statement, to be deemed duly stamped, unless or until it is shown that the statement is untrue and that the instrument is in fact insufficiently stamped.

General directions as to the cancellation of adhesive stamps.

‡13. (1) An instrument the duty upon which is denoted by an adhesive stamp is not to be deemed duly stamped unless the person required by law to deface the adhesive stamp defaces the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date

† See, however, Ord. No. 16 of 1905, sec. 2.

‡ See Ord. No. 14 of 1902, sec. 1; Ord. No. 40 of 1904, secs. 1, 2, and 4; and Act No. 15 of 1909, sec. 4.

of his so writing, so as effectively to deface the stamp and render the same incapable of being used for any other instrument or for any postal purpose.

(2) Where two or more adhesive stamps are used to denote the stamp duty upon an instrument each and every stamp is to be defaced in manner aforesaid.

(3) Every person who, being required by law to deface an adhesive stamp, neglects or refuses duly and effectually to do so in the manner aforesaid shall incur a fine of ten pounds.

§14. Where the duty is denoted by adhesive stamps, the following provisions shall apply:—

(1) The stamps on all instruments *other than notarially executed instruments* registered in the Registry of Deeds or other Registration Office, or which are executed by or before the Registrar of Deeds or other Registration Officer, shall be defaced by the Registrar of Deeds or other registration officer.

¶(2) The stamps on notarial instruments shall be defaced by the notary by or before whom they are passed.

* (3) The stamps on all other instruments, unless otherwise provided for by any law, shall be defaced at the time of execution by the party who is liable under this Proclamation to stamp such instrument; *provided always that where no other express provision to the contrary is made it shall be lawful for any signatory to an instrument who is also a party thereto to deface at the time of execution thereof any stamp affixed thereto for purposes of duty if left undefaced by the person liable to stamp the instrument; but this proviso shall not relieve any person from any penalty incurred by him for omitting or failing to deface such stamp.*

(4) Any person, being a party to any instrument liable to stamp duty, or entitled to act thereunder, who, having accepted such instrument without its being duly stamped, thereafter affixes, or causes to be affixed, any stamp to the same with intent to make it appear that such instrument was duly stamped as required by this Proclamation, shall be liable to a fine of one hundred pounds.

15. (1) A stamp which by any word or words on the face of it is appropriated to any particular description of instrument is not to be used, or if used is not to be available, for an instrument of any other description.

(2) An instrument falling under the particular description to which any stamp is so appropriated as aforesaid is not to be deemed duly stamped unless it is stamped with the stamp so appropriated.

§ See Ord. No. 40 of 1904, sec. 4.

¶ Words in italics inserted by Ord. No. 40 of 1904, sec. 3 (a). See Govt. Notice No. 48 of 1903, applying this sub-section (1) to instruments registered or executed by or before the Registrar of Deeds or other registration officer, and not to other documents which may be lodged together with them.

* As amended by Ord. No. 40 of 1904, sec. 3 (b).

¶ Words in italics added by Ord. No. 16 of 1903, sec. 3. See Govt. Notice No. 48 of 1903, to the effect that "stamps affixed to powers of attorney granted to bonds or deeds of transfer" under this sub-section must be defaced by the grantors of the powers of attorney.

Defacement by the Registrar of Deeds, by notaries and other persons.

Appropriated stamps.

Terms upon which instruments not duly stamped may be received in evidence.

16. No instrument which is required by this Proclamation to be stamped shall be available for any purpose whatever, saving express provision to the contrary, unless the same is duly stamped as provided in this Proclamation, and in particular no such instrument which is not so stamped shall be produced or given in evidence or be made available in any Court in this Colony except

(a) in criminal proceedings;

(b) in any proceeding by, or on behalf of, the Government for the recovery of any stamp duties on such instruments, or any penalties alleged to have been incurred by reason of such instrument not being duly stamped;

(c) in other proceedings, upon payment by the party producing or tendering such instrument in evidence, by way of penalty of such sum as the Court may direct, not being less than three times the original stamp duty, and subject to the instrument being stamped with the stamps which ought to have been originally affixed. The stamps shall be defaced, and the payment of such penalty shall be recorded on the instrument by the Registrar or other officer of the Court;

* (d) *as often as any instrument shall have been produced or given in evidence as provided in sub-sections (b) and (c) of this section and the amount of the unpaid stamp duty together with such penalty as the Court may direct (not being less than three times the original stamp duty) has been stamped thereon and duly defaced as provided in the said sub-section (c) such instrument shall thereafter be deemed and taken to be duly stamped;*

* (e) *if in any case the Court is of opinion that the failure to stamp an instrument was due to inadvertence or lack of knowledge and that there was no intent to evade payment of duty or that the minimum penalty which the Court has power to inflict is excessive it may cause such instrument together with a certificate stating such opinion aforesaid to be transmitted to the Colonial Treasurer in order that such instrument may be dealt with in manner provided by law:*

Provided always that

(1) when any such instrument is produced or given in evidence by or on behalf of the Crown, or any officer of the Government acting as such, no penalty or fine or stamp duty shall be deemed to be imposed upon or payable by the Crown or by such officer;

(2) the foregoing proviso shall not exempt any other person from any liability in respect of such instrument;

(3) save where other express provision is made in this Proclamation, it shall be lawful for the Controller of the Treasury to cause to be stamped after the execution thereof any instrument which through inadvertence and without intent to evade payment of the proper duty has not been

* Sub-secs. (d) and (e) were added by Ord. No. 16 of 1905, sec. 4.

duly stamped on payment of the unpaid duty and a penalty not less than three times the amount of such unpaid duty. Such penalty shall be denoted by means of stamps, to be affixed by the officer who stamps the instrument, and to be defaced by him, together with the stamps denoting the duty in the manner prescribed by this Proclamation; †*provided always that if the amount of such penalty exceeds twenty pounds the Colonial Treasurer may remit any part of the amount which exceeds the said sum.*

‡17. The persons liable to stamp the several instruments mentioned shall be the persons respectively designated in this section, and any person, being liable to stamp any such instrument, who executes and delivers the same without duly stamping it shall, except in cases where other express provision is made in this Proclamation, be liable to a penalty not exceeding fifty pounds.

By whom instruments are to be stamped.

(1) *Bill of Exchange and Promissory Note.*—The drawer or maker thereof.

(2) *Bond.*—The person who makes or passes the same.

(3) *Lease.*—The lessor.

(4) *Policy of Life Insurance.*—The person or company issuing the same.

(5) *Receipt.*—The person giving it.

(6) In the case of other instruments, the person executing || the same.

18. Save where other express provision is made by this Proclamation in relation to any particular instrument

Provision for stamping instruments executed out of the Colony.

(a) any instrument which has been first executed at any place out of this Colony may be stamped at any time within §*twenty-one* days after it has been first received in this Colony by the person receiving it, being one of the parties thereto, or entitled to act thereunder;

(b) in such case as above a note shall be made on the instrument by the party stamping it of the true date of receiving it, and he shall forthwith deface such stamps in manner provided by this Proclamation, unless the instrument is one on which the stamps should be defaced by a notary or registration officer.

19. No instrument requiring to be stamped before registration shall be registered unless it is duly stamped, and if any person whose office it is to enrol, register or enter in or upon any rolls, books or records any instrument chargeable with duty enrolls, registers or enters any such instrument not being duly stamped, he shall incur a fine of ten pounds.

Penalty for enrolling, etc., instrument not duly stamped.

20. (1) For the purposes of this Proclamation the expression “bill of exchange” includes—

Meaning of “bill of exchange.”

An unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person

† Words in italics added by Ord. No. 40 of 1904, sec. 5.

‡ See, however, Ord. No. 40 of 1904, sec. 4.

|| As in *Gazette*.

§ Word in italics substituted by Ord. No. 14 of 1902, sec. 2.

to whom it is addressed to pay on demand or at a fixed determinable future time a sum certain in money to or to the order of a specified person or to bearer.

- ¶(2) An unqualified order to pay coupled with
- (a) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount; or
 - (b) a statement of the transaction which gives rise to the bill; or
 - (c) a statement on the bill that it is drawn against specified documents attached thereto for delivery on acceptance or on payment of the bill, as the case may be; or
 - (d) a statement on the bill that it is drawn under or against a specified letter of credit or other similar authority;

is to be deemed an unconditional order.

¶(3) A cheque is a bill of exchange drawn on a banker payable on demand.

The duty of one penny upon a bill of exchange payable on demand or at sight or presentation may be denoted by an impressed stamp.

21. *Repealed by Act No. 15, 1909, section six (3).*

22. Every person into whose hands any bill of exchange or promissory note drawn or made out of this Colony comes in this Colony before it is stamped shall before he presents for payment or endorses, transfers, or in any manner negotiates or pays the bill or note affix thereto a proper adhesive stamp or proper adhesive stamps of sufficient amount and deface every stamp so affixed thereto in manner required by this Proclamation.

Provided as follows:—

- (a) If at the time when any such bill or note comes into the hands of any bona fide holder there is affixed thereto an adhesive stamp effectually defaced, the stamp shall, as far as relates to the holder, be deemed to be duly defaced, although it may not appear to have been affixed or defaced by the proper person.
- (b) If at the time when any such bill or note comes into the hands of any bona fide holder there is affixed thereto an adhesive stamp not duly defaced, it shall be competent for the holder to deface the stamp as if he were the person by whom it was affixed, and upon his so doing the bill or note shall be deemed duly stamped and as valid and available as if the stamp had been defaced by the person by whom it was affixed.

But neither of the foregoing provisos is to relieve any person from any fine or penalty incurred by him for not defacing an adhesive stamp.

23. A bill of exchange or promissory note which purports to be drawn or made out of this Colony is for the purpose of determining the mode in which the stamp duty thereon is to

¶ As in *Gazette*.

Meaning of promissory note.

Provisions as to stamping foreign bills and notes.

As to bills and notes purporting to be drawn abroad.

be denoted to be deemed to have been so drawn or made although it may in fact have been drawn or made within this Colony.

* 24. (1) Every person who issues, endorses, transfers, negotiates, presents for payment, or pays any bill of exchange or promissory note liable to duty and not being duly stamped shall incur a fine of fifty pounds, and the person who takes or receives from any other person any such bill or note, either in payment or as a security or by purchase or otherwise, shall not be entitled to recover thereon or to make the same available for any purpose whatever.

Penalty for issuing, etc., any unstamped bill or note.

(2) Provided that if any bill of exchange payable on demand or at sight or on presentation is presented for payment unstamped, the person to whom it is presented may affix thereto an adhesive stamp of one penny and deface the same as if he had been the drawer of the bill, and may thereupon pay the sum in the bill mentioned and charge the duty in account against the person by whom the bill was drawn or deduct the duty from the said sum, and the bill, in so far as respects the duty, is to be deemed valid and available.

(3) But the foregoing proviso is not to relieve any person from any fine or penalty incurred by him in relation to such bill.

25. When a bill of exchange is drawn in a set according to the custom of merchants, and one of the set is duly stamped, the other or others of the set shall, unless issued or in some manner negotiated apart from the stamped bill, be exempt from duty; and upon proof of the loss or destruction of a duly stamped bill forming one of a set any other bill of the set which has not been issued or in any manner negotiated apart from the lost or destroyed bill may, although unstamped, be admitted in evidence to prove the contents of the lost or destroyed bill.

One bill only of a set need be stamped.

26. (1) For the purposes of this Proclamation the expression "broker's note" means a note sent by a broker or agent to his principal advising him of the sale or purchase of any marketable security.

Provisions as to broker's note.

(2) Where a note advises the sale or purchase of more than one description of marketable security the note shall be deemed to be as many broker's notes as there are descriptions of stock or security sold or purchased.

(3) Every adhesive stamp on a broker's note is to be defaced in manner prescribed by this Proclamation by the person by whom the note is executed.

27. (1) Any person who effects any sale or purchase of any marketable security as a broker or agent shall forthwith make and execute a broker's note and transmit the same to his principal, and in default of so doing shall incur a fine of twenty pounds.

Penalty for a person not making stamped broker's note.

(2) Every person who makes or executes any broker's note chargeable with duty and not being duly stamped shall incur a fine of twenty pounds.

* See, however, Ord. No. 40 of 1904, sec. 4.

(3) No broker, agent, or other person shall have any legal claim to any charge for brokerage, commission, or agency with reference to the sale or purchase of any stock or marketable security mentioned or referred to in any broker's note unless the note is duly stamped.

(4) The duty of one shilling upon a broker's note may be added to the charge for brokerage or agency.

Provisions as to proxies and voting papers.

28. (1) Every letter or power of attorney for the purpose of appointing a proxy to vote at a meeting is to specify the day upon which the meeting at which it is intended to be used is to be held and is to be available only at the meeting so specified and any adjournment thereof.

* (2) The duty of one penny may be denoted by an impressed stamp.

† (3) Every person who makes or executes or votes or attempts to vote under or by means of any such letter or power of attorney, not being duly stamped, shall incur a fine of fifty pounds.

Meaning of "policy of life insurance."

29. (1) For the purposes of this Proclamation the expression "policy of life insurance" means a policy upon any life or lives, or upon any event or contingency relating to or depending upon any life or lives, except a policy of insurance against accident.

Penalty for not making out policy or making, etc., any policy not duly stamped.

30. Every person who

(1) receives or takes credit for any premium or consideration for any life insurance and does not within one month after receiving or taking credit for the premium or consideration make out and execute a duly stamped policy of insurance; or

(2) pays or allows in account, or agrees to pay or allow in account, any money upon or in respect of any policy of life insurance which is not duly stamped;

shall incur a fine of twenty pounds.

Receipts.

31. (1) For the purposes of this Proclamation the expression "receipt" includes any note, memorandum, or writing whereby any money or any bill of exchange or promissory note for money is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand or any part of a debt or demand is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person.

(2) The duty upon a receipt may be denoted by an impressed stamp.

Penalty for offences in reference to receipts.

32. If any person

(1) gives a receipt liable to duty and not duly stamped; or

(2) in any case where a receipt would be liable to duty refuses to give a receipt duly stamped; or

* As amended by Ord. No. 14 of 1902, sec. 3.

† As amended by Act No. 15 of 1909, sec. 6 (2).

(3) upon a payment to the amount of one pound or upwards gives a receipt for a sum not amounting to one pound, or separates or divides the amount paid with intent to evade the duty;

he shall incur a fine of ten pounds.

* 33. (1) A statement of the amount which is to form the nominal share capital of any company to be registered with limited liability shall be delivered to the Registrar of Companies, and a statement of the amount of any increase of registered capital of any company now registered or to be registered with limited liability shall be delivered to the said registrar, and every such statement shall be charged with an *ad valorem* duty of seven shillings and sixpence for every hundred pounds and any fraction of one hundred pounds over any multiple of one hundred pounds of the amount of such capital or increase of capital, as the case may be.

Charge of duty on capital of limited liability companies.

(2) In the case of neglect to deliver such a statement as is hereby required to be delivered, the company shall be *liable** to pay to His Majesty in His Colonial Government, in addition to the duty, a sum equal to ten pounds per centum upon the amount of duty payable, and a like penalty for every month after the first month, during which the neglect shall continue.

(3) The provisions of this section shall also apply to any company which has registered any capital or increase of capital since the first day of September, 1900, under Government Notice No. 129 of 1901. Provided that where any such company has been registered, or where any increase of capital has been registered in terms of the said notice, on a date prior to the taking effect of this part of this Proclamation, the provisions of this section shall be deemed to have been complied with by payment of the amount for which security has been given or required by the said notice.

34. *Repealed by Ordinance No. 16, 1905, section six.*

Duty on loan capital.
Duty on bank notes.

35. In lieu of the stamp duty of one penny on bank notes imposed by article *ten* of Law No. 2 of 1893, there shall be paid on or before the fifteenth of January of every year, by every bank issuing notes in this Colony, a duty of five shillings for every hundred pounds or fraction thereof of the average amount of the notes circulated by such bank during the preceding year, which amount shall be estimated at the average circulation throughout such year as shown by the returns rendered by such bank in accordance with the aforesaid Law No. 2 of 1893.

36. Every person who does, or causes, or procures to be done, or knowingly aids, abets, or assists in doing any of the acts following, that is to say

Certain offences in relation to dies and stamps.

(1) forges a die or stamp;

(2) prints or makes an impression upon any material with a forged die;

* This section, and sec. 34, took effect from date of publication of the Proclamation, i.e. 21st March, 1902 (see *Government Gazette* of that date); see sec. 43 *post*.

* Word in italics appears in *Gazette*; in Pr. 1900-1902 the word "required" is given.

(3) fraudulently prints or makes an impression upon any material from a genuine die;

(4) fraudulently cuts, tears, or in any way removes from any material, any stamp with intent that any use should be made of such stamp or of any part thereof;

(5) fraudulently mutilates any stamp with intent that any use should be made of any part of such stamp;

(6) fraudulently fixes, or places upon any material, or upon any stamp, any stamp or part of a stamp which, whether fraudulently or not, has been cut, torn, or in any way removed from any other material, or out of or from any other stamp;

(7) fraudulently erases, or otherwise, either really or apparently, removes from any stamped material any name, sum, date or other matter or thing whatsoever thereon written with the intent that any use should be made of the stamp upon such material;

(8) knowingly sells, or exposes for sale, or utters or uses any forged stamp or any stamp which has been fraudulently printed or impressed from a genuine die;

(9) knowingly and without lawful excuse (the proof whereof shall lie on the person accused) has in his possession any forged die or stamp, or any stamp which has been fraudulently printed or impressed from a genuine die, or any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material, out of which any name, sum, date, or other matter or thing has been fraudulently erased or otherwise either really or apparently removed;

(10) fraudulently removes, or causes to be removed from any instrument any adhesive stamp, or affixes to any other instrument or uses for any postal purposes any adhesive stamp which has been so removed with intent that the stamp may be used again;

(11) sells, or offers for sale, or utters any adhesive stamp, which has been so removed, or utters any instrument having thereon any adhesive stamp which has to his knowledge been so removed as aforesaid;

shall be guilty of an offence against this Proclamation, and shall on conviction be liable to be imprisoned for any term not exceeding seven years.

Offences
relative to the
unlawful
possession of
stamp paper,
dies, etc.

37. Every person who without lawful authority or excuse (the proof whereof shall lie on the person accused) purchases or receives or knowingly has in his possession or custody

(a) any paper manufactured or provided for the purpose of making or impressing stamps by or for the proper authorities before the same shall have been duly stamped and issued for public uses; or

(b) any plate, die, dandy-roller, mould, or other implement;

shall be guilty of an offence, and shall be liable on conviction to be imprisoned with or without hard labour for any term not exceeding two years.

38. On sworn information that there is just cause to suspect any person of being guilty of any of the offences contained in the two preceding sections, or to suspect that any stamps either forged, stolen, or fraudulently obtained, are in any place or in the possession or custody of any person, any magistrate or justice of the peace, or any other officer who may be authorized to issue a search warrant, shall be entitled to issue a search warrant authorizing any police constable or proper officer to search any such suspected person or any place belonging to or occupied by the suspected person, or where he is suspected of being or having been in any way engaged or concerned in the commission of any such offence, or of secreting any machinery, implements or utensils applicable to the commission of any such offence, or where such machinery, implements or utensils, or any stamps stolen, forged or fraudulently obtained may be, and if upon such search any of the said several matters and things are found the same may be seized and carried away, and shall afterwards be delivered to the magistrate of the district, who shall have custody thereof until the same be dealt with otherwise by law.

Search warrants.

Seizure of incriminating articles.

39. Any matters or things so seized shall be adjudged to be forfeited to the Crown by the court or the magistrate having jurisdiction as to such offences, and thereafter shall be dealt with as the Controller of the Treasury may direct

Forfeiture of articles seized.

(a) if they be forged or fraudulently imprinted stamps, or if they be any die, stamp, implement or material which it is one of the said offences to make or possess or use;

(b) if they be stamps stolen or improperly obtained, or are reasonably suspected of having been stolen or improperly obtained, unless the person who has possession or custody of them shall satisfactorily account for such possession or custody; provided, however, that nothing herein contained shall affect the rights of any person otherwise entitled in law to such stamps, or the possession or custody thereof.

40. If any forged stamps are found in the possession of any person appointed to sell and distribute stamps, or being or having been licensed to deal in stamps, that person shall be deemed and taken, unless the contrary is satisfactorily proved, to have had the same in his possession knowing them to be forged, and with intent to sell, use, or utter them, and shall be liable to the punishment imposed by law upon a person selling, using, uttering, or having in possession forged stamps knowing the same to be forged.

Improper possession of forged stamps by persons appointed to sell or deal in stamps.

41. Where stamps are seized under a warrant the person authorized by the warrant shall, if required, give to the person in whose custody or possession the stamps are found an acknowledgment of the number, particulars, and amount of the stamps, and permit the stamps to be marked on the back before the removal thereof.

Acknowledgment to be given by person seizing stamps.

42. Any duty or fine or penalty imposed by this Proclamation shall be a debt due to His Majesty in His Colonial Government, and may be recovered by action in any competent

Recovery of penalties and fines.

Court. **On recovery of the duty and penalty due in respect of an instrument, the instrument shall be stamped accordingly by a competent revenue officer and thereupon shall be deemed a duly stamped instrument.*

Title of
Proclamation
and date of
taking effect
thereof.

43. This Proclamation shall be cited as the Stamp Duties Amendment Proclamation, 1902, and shall, except as regards sections *thirty-three* and *thirty-four*, take effect from and after the fifteenth of April next. The aforesaid sections shall take effect on the publication of this Proclamation.

FIRST SCHEDULE.

LAWS REPEALED.

<i>Law.</i>	<i>Extent of Repeal.</i>
Law No. 2 of 1871	Article 7.
† Law No. 5 of 1874	<i>So much of Article 12 as required payment of sums of £10, £20, £30, as the case may be, on the registration of companies with limited liability.</i>
Volksraad Resolution No. 114, 22nd May, 1875	The whole, with the exception of such portion thereof as relates to the <i>dates</i> † on the appointment of surveyors and the admission of doctors and apothecaries.
Law No. 5 of 1891	The whole.
Law No. 7 of 1892	The whole.
Law No. 13 of 1898	The whole.
§ Law No. 2 of 1875	The whole.
Transvaal Proclamation No. 39 of 1901	The whole.

SECOND SCHEDULE.

STAMP DUTIES ON INSTRUMENTS.

Affidavit and Sworn Declaration.	<i>Superseded by Act No. 15 of 1909, Third Schedule, item 1.</i>
Antenuptial Contract	£1 0 0
Bill of Exchange, etc.	<i>Superseded by Act No. 15 of 1909, Third Schedule, item 3.</i>
Bond, etc.	<i>Superseded by Act No. 15 of 1909, Third Schedule, item 4.</i>
Broker's Note for or relating to the sale or purchase of any stock or marketable security	£0 1 0
Copy of any instrument passed before a notary public.	<i>Repealed by Ordinance No. 14 of 1902, section 4 (a).</i>
Cheque.	See Bill of Exchange.
Lease of any land, building, or stand.	<i>Repealed by Ordinance No. 40 of 1904, section 6 (1), and new provisions substituted, which again were repealed by Ordinance No. 16 of 1905, section 11. See now Ordinance No. 16 of 1905, Schedule, and Act No. 15 of 1909.</i>
Notarial protest of a bill or note.	<i>Superseded by Act No. 15 of 1909, Third Schedule, item 7.</i>
Notarial certificate of the presentation of a bill or note.	<i>Superseded by Act No. 15 of 1909, Third Schedule, item 8.</i>
Notarial instrument or grosse, etc.	<i>Superseded by Ordinance No. 14 of 1902, sec. 4 (b), and again by Ordinance No. 40 of 1904, section 7.</i>
Policy of Life Insurance.	<i>Superseded by Act No. 15 of 1909, Third Schedule, item 9.</i>

* Sentence in italics added by Act No. 15 of 1909, sec. 6 (1).

† This partial repeal of Law No. 5 of 1874, art. 12, is by virtue of Trans. Proc. No. 26 of 1902, sec. 1.

‡ Word in italics appears in *Gazette*; in Pr. 1900-1902 the word "stamps" is given.

§ This law was omitted in Pr. 1900-1902, but appears in *Gazette*.

Power of Attorney :

- (1) *Superseded by Act No. 15 of 1909, Third Schedule, item 10.*
- (2) *Amended by Ordinance No. 14 of 1902, section 4 (c), and repealed by Ordinance No. 40 of 1904, section 6 (2), which substituted new provisions, which were again superseded by Act No. 15 of 1909, Third Schedule.*
- (3), (4), (5), and (6). (3) and (4) *repealed and new provisions (3), (4), (5), and (6) substituted by Ordinance No. 40 of 1904, section 6 (2), which provisions again superseded by Act No. 15 of 1909, Third Schedule.*
- * (7) *A power of substitution shall be subject to duty in like manner as a power of attorney.*
- * (8) *The stamps on powers granted by more than one mandant may be cancelled by any one of them.*

Receipt given for or upon the payment of money amounting to £1 or upwards £0 0 1

EXEMPTIONS FROM STAMP DUTY.

Affidavit and Sworn Declaration.

Any affidavit or sworn declaration required by law, or by any public official authorized thereto, for purposes connected with the payment of any tax or duty to the Colonial Treasury.

Bills of Exchange :

- (1) Bill of exchange drawn by any banker in this Colony upon any other banker therein, not payable to bearer or to order, and used solely for the purpose of settling or clearing any account between such bankers.
- (2) Bill of exchange drawn by or upon the Colonial Treasury, or upon any sub-accountant of the Colonial Treasury, or upon any public account.
- (3) Coupons or warrants for interest or dividends attached to and issued with any security or share certificate.
- (4) Order addressed by any banker to another banker with whom is kept any account into which public revenue is paid, authorising the transfer of money from the account of such first-named banker to such revenue account.

Bonds :

- (1) Bond given by or on behalf of any officer in the employment of the Colonial Government in respect of the discharge of his official duties.
- (2) Bond given in respect of the payment of Customs Duty or for public revenue.

Receipts :

- (1) Receipt given by any receiver of revenue, or other public officer, in respect of any tax or duty paid to him, or in respect of any money received by him in the course of his official duties.
- (2) Receipt on post office orders or money orders issued under the regulations made by the Government in that behalf.
- (3) Receipt for wages or salary paid by any department of the public service of the Colony to any official, or for witnesses' expenses in a criminal trial.
- † (4) *Receipts given for money deposited in a bank or with any banker to be accounted for, and expressed to be received of the person to whom the same is to be accounted for.*
- † (5) *Acknowledgment by any banker of the receipt of any bill of exchange or promissory note for the purpose of being presented for acceptance or payment.*
- ‡ (6) *Receipts passing between any benefit society, provident society, mutual building society, or savings bank society (whether registered under any law or not) and any member, borrower, or depositor of such society.*

In any case of doubt as to the right to exemption under this clause the decision of the Colonial Treasurer shall be final.

* (7) and (8) added by Ord. No. 40 of 1904, sec. 6 (2).

† Paragraphs (4) and (5) are inserted by virtue of Trans. Proc. No. 26 of 1902, sec. 2.

‡ Paragraph (6) added by Ord. No. 16 of 1905, sec. 14.

PROCLAMATION No. 13 OF 1902.

Proclamation
(Trans.) No.
13 of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 10th April, 1902.)

DAYS OF GRACE.

Preamble.

WHEREAS doubts have arisen as to the operation of the provision of The Bills of Exchange Proclamation, 1902, abolishing Days of Grace in this Colony, and it is expedient to remove such doubts;

Now, therefore, by virtue of the authority in me vested, I do hereby proclaim, declare, and make known as follows:—

Interpreta-
tion of clause
as to Days of
Grace in Pr.
Tr. 11 of 1902.

Clause 2 of section *twelve* of The Bills of Exchange Proclamation, 1902, declaring that there are no Days of Grace in this Colony shall only apply to Bills of Exchange and Promissory Notes drawn or made on or after the fifteenth April, 1902.

†PROCLAMATION No. 14 OF 1902.

Proclamation
(Trans.) No.
14 of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR.

(Dated 10th April, 1902.)

PROVIDING FOR ADMINISTRATION OF JUSTICE WITHIN THE
COLONY OF THE TRANSVAAL PENDING THE ESTABLISHMENT
OF THE SUPREME COURT OF THE TRANSVAAL.

*WHEREAS it is expedient to make provision for the due and effectual administration of justice within this Colony pending the establishment of the Supreme Court of the Transvaal:

Preamble.

Now, therefore, by virtue of the authority in me vested I do hereby declare, proclaim, and make known as follows:—

1. There shall be and there is hereby created, erected, and constituted within this Colony a court, which shall be called "The High Court of the Transvaal," and shall be a Court of Record.

2. The said court shall consist of and be holden by and before so many members as the Governor may appoint, not being less than four, one of whom shall be the president thereof, and shall be called and known as the Judge President of the High Court of the Transvaal; and he and the other members of the said court, who shall be called and known as judges, shall be respectively advocates admitted or entitled to be admitted to practise in the said court, or judges of the Supreme Court of any British Colony, and shall be appointed by the Governor of this Colony by commission under his hand and seal.

High Court to
be established
in Colony.Constitution
of court;
qualification
and appoint-
ment of the
members
thereof.

The judge president and each of the judges of the said court shall on appointment be required before exercising the functions of his office to take the oaths set forth in Schedule A hereto annexed before the Governor, who is hereby authorized to administer the same.

‡3. Upon the death, resignation, sickness or incapacity of the judge president or any judge of the said court, or in case of the absence of any of them from their duties on leave, or in case of any such suspension from office as hereinafter mentioned of such judge president or judge it shall and may be lawful for the Governor, by commission under his hand and seal, to nominate and appoint some fit and proper person or persons to act as, and in the place and stead of, any such judge

How vacancy
to be filled
in case of
death, etc., of
any member
of the High
court.

† See Ord. No. 2 of 1902, Ord. No. 10 of 1903, Ord. No. 31 of 1904, Ord. No. 1 of 1905.

* This Proclamation is to form part of and be read as one with Ord. No. 2 of 1902, and apply to the courts established by it; and the following expressions are to be substituted in this Proclamation wherever they occur:—

(a) "Supreme Court" for "High Court".

(b) "Witwatersrand High Court" for "Witwatersrand District Court".

(c) "Chief Justice" for "Judge President".

‡ For pensions of judges on retirement, etc., see Ord. No. 35 of 1903.

president or judge so dying, or resigning, or labouring under such sickness or incapacity as aforesaid, or being so absent as aforesaid from this Colony, or being so suspended until the vacancy or vacancies so created by any such death or resignation or sickness, or incapacity, or absence, or suspension, shall be supplied by a new appointment to be made in manner aforesaid by the Governor; or until the judge president or judge so becoming sick or incapable, or being absent, or suspended, as aforesaid, shall resume such his office and enter into the discharge of the duties thereof.

How members of the court are to hold or be suspended from office.

4. The judge president and other judges of the said court shall hold such their offices during good behaviour; provided, nevertheless, that it shall and may be lawful for the Governor by any order or orders to be by him for that purpose made and issued under his hand and seal upon proof of the misconduct of any such judge president or judge as aforesaid, to suspend him from such his office, and from the discharge of the duties thereof; provided that in every such case the said Governor shall immediately report for the information of His Majesty, through one of His principal Secretaries of State, the ground and causes of such suspension, and His Majesty in Council shall have full power and authority to confirm or disallow such suspension, or upon sufficient proof to his satisfaction of any such misconduct to remove and displace any such judge president or judge from such office.

The seal of the court.

5. The said High Court shall have and use as occasion may require a seal bearing a device and impression of the Royal Arms of the United Kingdom of Great Britain and Ireland, within an exergue or label surrounding the same with this inscription, "The Seal of the High Court of the Transvaal". The said seal shall be delivered to, and shall be kept in the custody of, the registrar of the said court or the officer for the time being acting as such.

The custody of the seal.

Salaries of members of court.

6. The judge president and judges of the said court so long as they shall hold their offices respectively, shall be entitled to have and receive such salaries as shall be granted to them by the Governor, which shall be in lieu of all fees of office, perquisites, emoluments and advantages whatsoever; and no fees of office, perquisites, emoluments or advantages other than and except the said salaries shall be accepted, received or taken by any such judge president or judge on any account or any pretence whatsoever.

As to the member of the court taking any other office, etc.

7. No member of the said court shall accept, take, or perform any other office, place of profit or emolument within this Colony without the consent of the Governor; and the acceptance of any such other office or place as aforesaid, without the consent of the Governor, shall vacate and avoid such his office of member of the said court, and the salary thereof shall cease accordingly from the time of the acceptance of any such other office or place.

What officers to belong to court: registrar; master.

8. There shall be attached and belong to the said court one officer to be styled the Registrar, and one other officer to be styled the Master thereof, together with so many other officers

as to the judge president of the said court for the time being shall, from time to time appear to be necessary for the administration of justice and the due execution of the powers and authorities which are granted to the said court by this Proclamation, who shall all hold office during His Majesty's pleasure; provided, nevertheless, that no new office shall be created in the said court unless the Governor shall first signify his approbation thereof to the said judge president in writing under his hand; and, provided further, that each of the aforesaid officers shall, before exercising the functions of his office, take the oath set forth in Schedule B annexed hereto before any of the members of the said court.

9. All persons who shall and may be appointed to the offices of Registrar or Master of the said court, shall be appointed by the Governor by commission under his hand and seal. How officers of court to be appointed.

*10. The said court may approve, admit to practise, and enrol as an advocate of the said court therein Admission of advocates to practise in the said court.

(a) any person who shall have been admitted as a barrister in England or Ireland, or as an advocate in the Court of Session of Scotland, or as an advocate in the Supreme Court of the Colony of the Cape of Good Hope;

(b) any person who shall have passed the necessary examination, entitling him to be admitted as an advocate of the High Court of the late South African Republic, or who shall have been admitted as an advocate of the said court. Such last-mentioned person shall be admitted without being required to pay any fresh or additional stamp duty;

(c) any person who shall have been admitted to practise as an advocate in the Supreme Court of any British Colony, and who, at the date of his application for admission to practise in this Colony, remains enrolled as an advocate of such Supreme Court as aforesaid; provided that such person

(1) shall have passed an examination in law, which at the date of his application for admission as aforesaid, is covered by a notice issued in terms of sub-section (a) of section *twelve* of this Proclamation; or

(2) shall for a period of seven years successively have practised in such Supreme Court as aforesaid exclusively as an advocate, and not in partnership with any attorney of such court;

(d) any person who, not being entitled to be admitted under any of the previous sub-sections, shall have been admitted to practise as an advocate in the Supreme Court of any Colony or State now forming part of British South Africa, and who at the date of the taking effect of this Proclamation shall have practised as such advocate for a period of seven years successively;

* See Ord. No. 1 of 1905, sec. 2.

(e) any person who shall pass an examination in this Colony to be hereafter, by notice in the *Gazette*, declared to be an examination entitling the person who passes it to be admitted as an advocate of the said court; provided always that no person shall be admitted to practise as an advocate of the High Court of the Transvaal, or after having been so admitted shall continue to practise as aforesaid, who shall either himself be carrying on directly or indirectly the business of an attorney, or be directly or indirectly interested in the business of any attorney or firm of attorneys practising within this Colony or any other British Colony; and provided further that no person shall be admitted to practise as aforesaid until he shall have taken in open court the oaths set forth in Schedule C hereto annexed.

*11. The said court may approve, admit to practise, and enrol as an attorney of the said court

Admission of attorneys to practise in the said court.

(a) any person who, being an attorney or solicitor of any of the Courts of Record in London or Dublin, or being a writer to the signet, or a solicitor or law agent admitted to practise in the Supreme Courts in Scotland, or an attorney of the Supreme Court of the Colony of the Cape of Good Hope, is not under any order of suspension in any of such courts respectively;

(b) any person of full age who has passed the necessary examination and served the necessary time with an attorney, entitling him to be admitted as an attorney of the High Court of the late South African Republic, or having been an attorney of the said High Court is not under any order of suspension in such court. Such last-mentioned person shall be admitted without being required to pay any fresh or additional stamp duty;

†(c) any person of full age who produces satisfactory proof that he has actually served with a practising attorney in this Colony, either before or since, or partly before and partly since the annexation of the South African Republic to His Majesty's Dominions under a contract in writing registered at the office of the Registrar of the High Court of the late South African Republic, or of the High Court of this Colony, as the case may be, for a period of three years subsequent to the date of the registration of such contract, and that he has passed the examination in law and jurisprudence of the University of the Cape of Good Hope, or an examination in law which at the date of his application is covered by a notice issued in terms of sub-section (b) of section *twelve* of this Proclamation, as well as the matriculation examination of the said university or an examination in literature and science covered by a proclamation issued in terms of sub-section (c) of section *twelve* of this Proclamation;

‡(d) any person who shall produce satisfactory proof that he has been admitted as an attorney or solicitor in the Supreme Court of any British Colony, and that at the

* See Ord. No. 1 of 1904; Ord. No. 1 of 1905, sec. 2; Act No. 33 of 1908.

† See Ord. No. 31 of 1904, sec. 7.

‡ Words in italics were added by Ord. No. 31 of 1904, sec. 8.

date of his application for admission in this Colony his name remains enrolled as an attorney or solicitor of such Supreme Court and that he has practised as an attorney or solicitor of such Supreme Court for a period of seven successive years, or has passed such an examination in law as is mentioned in the last preceding sub-section; *provided always that no person shall be admitted as an attorney under this sub-section unless for a period of three years preceding the date of his admission as attorney or solicitor in a British Colony he was articled to serve and did serve as a clerk to an enrolled attorney or solicitor in such British Colony;*

(e) any person entitled to be admitted as an advocate; provided he satisfies the court that he has not practised as an advocate during the six months immediately preceding his application for admission as an attorney :

Provided always that every person admitted by the said High Court to practise as an attorney shall take the oaths set forth in Schedule C hereto annexed in open court unless otherwise ordered.

12. It shall be lawful for the Governor, after having consulted with and obtained the approval of the majority of the members of the said court, and in case the proposed notice be one under sub-sections (b) and (c) of this section after consultation with the president of the Law Society of this Colony (if there be one) from time to time to notify in the *Gazette*

Governor may approve examinations qualifying for admission.

(a) that any examination in law specified in such notice is to be deemed equivalent to the examination for the degree of Bachelor of Laws in the University of the Cape of Good Hope;

(b) †that any examination in law specified as aforesaid is to be deemed equivalent to the examination in law and jurisprudence of the University of the Cape of Good Hope;

(c) ‡that any examination in literature and science specified as aforesaid is to be deemed equivalent to the matriculation examination in the University of the Cape of Good Hope.

† The following examinations are deemed to be equivalent examinations, viz. : Final examination in law, Natal (Govt. Notice No. 206 of 1902), Transvaal Law Certificate Examination (Govt. Notices Nos. 521 of 1902 and 197 of 1903), examination for certificate in law, second class, mentioned in Law 6 of 1895 (Govt. Notice No. 197 of 1903), and Law Certificate Examination, O.R.C. (Govt. Notice No. 800 of 1909).

‡ The following examinations were declared equivalent, viz. : Preliminary exam. for certificate in law mentioned in Law 6 of 1895 (Govt. Notice No. 197 of 1903); First Class Teachers' Exam. of the late S.A.R. (Govt. Notice No. 1017 of 1903); Second Class Teachers' Exam. of late O.F.S. held before 1895 (Govt. Notice No. 1125 of 1903); Final Gymnasium Exam. of the Netherlands (Govt. Notice No. 1067 of 1904); Final Gymnasium Exam. of the late S.A.R. (Govt. Notice No. 359 of 1905); Matriculation Exam. of the University of Melbourne (Govt. Notice No. 641 of 1905); Matriculation Exam. of the University of Ireland (Govt. Notice No. 1156 of 1906); Exam. Bachelor of Arts in the University of Sydney (Govt. Notice No. 148 of 1909). The following examinations, viz. : General Knowledge Exam. held under Law Agents (Scotland) Act, 1873; the Second Class Certificate Exam. of the College of Preceptors (London), and the Preliminary Exam. under the Solicitors Act, 1877 (Scotland) declared equivalent by Govt. Notices Nos. 1281 of 1903, 338 and 729 of 1904, are no longer to be deemed equivalent from 1st January, 1905 (Govt. Notice No. 1066 of 1904).

Capacity and removal of persons enrolled.

13. The persons approved, admitted and enrolled as aforesaid shall be and they are hereby authorized to appear and plead and act for the suitors of the said court, subject always to their being suspended or removed by the said court upon reasonable cause.

How functions of advocates and attorneys to be discharged.

14. No person or persons whatsoever not so approved, admitted, and enrolled as aforesaid shall be allowed to appear, plead or act in the said court for or on behalf of any suitors; provided always that the functions and offices of advocates shall not be discharged in the said court by the attorneys thereof and the functions and offices of such attorneys shall not be discharged by such advocates; provided further that in case there shall not be a sufficient number of advocates within this Colony competent and willing to act for the suitors of the said court, the said court may and is hereby authorized to admit any of the attorneys thereof to appear and act as advocates during the time of such insufficiency only; and in case there shall not be a sufficient number of attorneys within the said Colony competent and willing to appear and act in that capacity for the suitors of the said court, the said court may and is hereby authorized to admit any of such advocates to practise and act in the capacity of attorneys during the time of such insufficiency only.

Admission of notaries and conveyancers.

15. The said court may approve, admit to practise, and enrol

(a) as a notary public any person who has been admitted as an attorney of the said court and who has passed an examination in notarial practice prescribed by any rule of court; or whose name appears on the rolls of the High Court of the late South African Republic as having been admitted to practise as a notary public;

(b) as a conveyancer any person who has been admitted as an attorney of the said court and who has passed an examination in conveyancing prescribed by any rule of court; or who has been admitted to practise as a conveyancer in the late South African Republic.

Jurisdiction of court.

16. The said court shall have cognizance of all pleas and jurisdiction in all civil causes and proceedings arising or which shall have arisen within the said Colony or which shall have arisen in the Transvaal prior to the annexation thereof to His Majesty's Dominions, with jurisdiction over His Majesty's subjects and all other persons whomsoever residing or being within the said Colony; provided always that

(1) *Repealed by Ordinance No. 38, 1902, section two (2).*

(2) *Repealed by Ordinance No. 38, 1902, section two (2).*

(3) the said court shall not exercise jurisdiction in any civil cause, matter, or proceeding in which the cause of action arose prior to the first day of September, 1900, unless the defendant thereto has been served with the process of the said court either personally within the jurisdiction of the court or in such other manner as the court may direct.

§ Word in italics appears in *Gazette*, but not in Pr. 1900-1902.

17. The said court shall have full power, authority, and jurisdiction to apply, judge, and determine upon and according to the laws now in force within this Colony, and all such other laws as shall at any time hereafter be duly made and established for the peace, order, and government thereof. The Roman-Dutch Law except in so far as it is modified by legislative enactments shall be the law of this Colony.

What laws to apply, etc.

*18. The said court shall have full power, jurisdiction, and authority to review the proceedings of all inferior courts of justice within this Colony, and to hear appeals from such courts and from the Special Criminal Courts at Pretoria and Johannesburg in all cases in which such appeals may be allowed by law. The pleadings and proceedings of the said court and of the Witwatersrand District Court hereinafter mentioned shall be carried on, and the sentences, decrees, judgments and orders thereof pronounced and declared in open court and not otherwise, and the several pleadings and proceedings of the said court shall be in the English language.

Review by court of proceedings of inferior courts.

Pleadings, language, etc., of court.

†19. The grounds upon which it is competent to bring the proceedings of the inferior courts under the review of the High Court are:—

Grounds of review.

(1) Incompetency of the court in respect of the cause, including all excess of the jurisdiction, whether committed by the judge in trying for an offence which, in respect of its nature or magnitude, or of its having been committed out of his jurisdiction, or of its having been already tried or forming the subject of a pending trial in any other competent court, was not subject to his jurisdiction, or in awarding a greater punishment than by the constitution of his court he had power to award.

Incompetency of the court in respect of jurisdiction.

(2) Incompetency of the court in respect of the judge himself as that either the judge himself or his near kinsman had an interest in the cause.

Incompetency in respect of interest of the judge or his near kinsman.

(3) Malice or corruption on the part of the judge.

Malice or corruption.

(4) Gross irregularity in the proceedings.

Gross irregularity.

(5) The admission of illegal or incompetent evidence or the rejection of legal and competent evidence.

Admission or rejection of evidence.

* 20. All actions for provisional sentence, all motions, applications and trial cases in which the defendant is in default may be heard before one member of the said court sitting in chambers; in all other civil proceedings any two of the members of the said court shall form a quorum, and shall be competent to execute all and every the powers, jurisdictions

Conduct and decision of civil suits.

* See Ord. No. 2 of 1902, sec. 7, as to the use of the Dutch language, South Africa Act section 137.

† Court of special magistrate to hear Asiatic appeals deemed to be an inferior court under this section; see Act No. 36 of 1908, sec. 6 (2).

* See Ord. No. 31 of 1904, sec. 1.

and authorities hereby granted to and vested in the said court; and in the event of any difference of opinion between such two members the case shall be re-heard before three or more members subject to such directions as to the taking of evidence or otherwise as the court may direct, and the decision of such two members when unanimous, or of the majority of three or more members in case of any difference of opinion, shall in all cases be deemed and taken to be the decision of the whole court.

21. During any period which shall by any law or rule of court be fixed as a vacation of the said court during which the ordinary business thereof shall be suspended, one member of the said court shall be competent to execute all and every the powers, jurisdictions, and authorities vested in the said court.

22. There shall be a right of appeal to the said court from every final order granted or judgment pronounced by a single member sitting in chambers.

23. The said court shall be holden in Pretoria, and for the dispatch of business it may sit in more than one division at the same time; provided that each such division shall be constituted of such a quorum at least of the members of the said court as is required by section *twenty* of this Proclamation. Every sitting of a division so constituted shall in law be considered to be and shall have all the consequences of an ordinary sitting of the High Court.

24. There shall be and there is hereby established a superior court for Johannesburg: The boundaries and limits of the area within which the said court shall have jurisdiction shall be defined by notice in the *Gazette* by the Governor, and may from time to time be altered as occasion may require. The said court shall have and exercise such jurisdiction as is hereinafter specified, and shall be called "The Witwatersrand District Court," hereinafter called the "District Court."

25. The said last-mentioned court shall be holden at Johannesburg before the Judge President or any one of the Judges of the High Court of the Transvaal, and for the dispatch of business it may sit in more than one division at the same time, each such division to be constituted of a single member. Every sitting of a division so constituted shall in law be considered to be and shall have all the consequences of an ordinary sitting of the said District Court.

26. There shall be attached and belong to the said District Court a registrar who shall keep the records of the said court together with so many other officers as may be found necessary. Such officers shall be appointed in the same manner as is hereinbefore provided for the appointment of officers of the High Court of the Transvaal.

* 27. The District Court shall be a Court of Record, and shall within the district in which it may be holden have and exercise concurrently with the High Court of the Transvaal all such and the same jurisdiction powers and authority as are by

* By Ord. No. 10 of 1903, sec. 1, the Witwatersrand High Court was given jurisdiction over all offences committed in the Witwatersrand District from 1st April, 1903, whether such offences were committed before or after 1st Sept., 1900; see, however, Ord. No. 1 of 1903, sec. 151, as to change of venue.

One member competent in vacation to exercise powers of High Court.
Right of appeal from member to High Court.
Where court to be holden.

Court in Johannesburg established.

Constitution of District Court.

Appointment of registrar and other officers.

Jurisdiction of District Court.

this Proclamation vested in the said last-mentioned court, save and except appellate jurisdiction and the power of reviewing the proceedings of inferior courts; and save and except that in proceedings in insolvency and all other proceedings in which a limited jurisdiction is conferred by the laws of the late South African Republic on circuit courts established therein, the said District Court shall have the same limited jurisdiction.

28. All advocates and attorneys admitted and enrolled in the High Court of the Transvaal shall be entitled, without any other enrolment, to be admitted to practise as advocates and attorneys in the District Court.

Advocates, etc., in High Court of the Transvaal admitted to practise as such in the District Court.

† 29. As often as any action, suit, or other proceedings shall be brought in the High Court of the Transvaal, or in the District Court, and it shall appear to the court before which such action, suit, or other proceeding may be pending that the same may be more conveniently or more fitly heard or determined in the other of the said courts, it shall be lawful for such court to order such action, suit, or other proceeding to be removed to such other court; and such order shall be certified by the court granting the same together with the process and proceedings in such action, suit, or other proceeding to the court into which such action, suit, or other proceeding shall be intended to be removed; and thereupon it shall be lawful for such last-mentioned court and such court is hereby required to proceed in such action, suit or other proceeding in like manner as if the same had been originally commenced and prosecuted in such last-mentioned court.

Removal of cases from one court to another.

30. In every case in which any judgment, decree, order, or other record of the High Court of the Transvaal, or of the District Court, shall require to be proved, inspected, or in any manner referred to in any other court, a copy of such record certified under the seal of the High Court of the Transvaal or as to any such record of the said District Court under the signature of the registrar of such court shall be taken and received as prima facie evidence of such record: Provided that it shall not be necessary in regard to any certified copy to prove the handwriting of any such registrar to any such copy.

Copy of record duly certified to be admitted as evidence.

31. It shall be lawful for the members of the High Court of the Transvaal, or the majority of them, to frame, constitute, and establish such rules, orders, and regulations as to them shall seem meet touching and concerning the time and place of holding the said court and the said District Court; the form and manner of proceeding to be observed in the said courts respectively; the practice and pleading upon all actions, suits, and other matters of a civil nature to be therein brought: the appointing of commissioners to take bail and examine witnesses; the examination of witnesses *de bene esse* and allowing the same as evidence; the proceedings of the sheriff

Rules and orders to be framed by High Court.

† Sec. 29 to apply to removals to and from circuit courts. See Ord. No. 10 of 1903, sec. 7.

and other ministerial officers of the said courts respectively; the process of the said courts and the mode of executing the same; the summoning of witnesses; the procedure with regard to the admission of advocates, attorneys, conveyancers, and notaries public, and other officers of the said courts; the suspension from the right to practise, or the cancellation of admission to practise in the said courts of advocates, attorneys, notaries public and conveyancers; the fees to be lawfully demanded by and payable to any officers or attorneys in the said courts respectively; the manner of recording and noting evidence of the proceedings in the said courts; and touching and concerning all such other matters and things necessary for the proper conduct and dispatch of business in the said courts: Provided always that no such rules, orders, and regulations shall be repugnant to the provisions of this Proclamation, and that the same shall be so framed as to promote, as far as may be, economy and expedition in the dispatch of the business of the afore-mentioned courts respectively.

Rules to be approved by Governor and published in *Gazette*.

‡32. Every rule, order, and regulation, as aforesaid, shall be submitted to the Governor for his approval, and on being so approved shall be published in the *Gazette* and shall take effect from and after such publication, unless some other subsequent time shall be named therein from which the same is to take effect; in which case it will take effect from such time, and shall from such time forward respectively be of full force and effect until altered or repealed by competent authority.

Appeals from the District Court.

* 33. It shall and may be lawful for any person being a party to any civil suit or proceeding in the District Court to appeal to the High Court of the Transvaal against any judgment decree or order of the said District Court: Provided that the party appellant shall within twenty-one days next after such judgment decree or order shall have been pronounced, give notice of appeal to the party respondent, and to the Registrar of the Court from which the appeal takes place, and shall, within three months after such judgment, decree, or order has been pronounced, duly prosecute such appeal in the said High Court of the Transvaal, in case there shall be a sitting of the said court within that period, or if there shall not be such sitting, then at the next sitting of the said court: Provided that it shall be lawful for the High Court of the Transvaal for good and sufficient cause shown, to extend the time within which the appellant shall prosecute his appeal.

Mode of hearing cases.

† 34. In every civil suit heard or tried before the High Court of the Transvaal or District Court the presiding member of such court shall cause the evidence if oral to be fully and clearly taken down in writing, and the evidence so taken shall be entered upon the proceedings of the said courts, and be of record.

‡ Such rules, orders, and regulations were published by Govt. Notices Nos. 153, 204 of 1902; 501, 1093, 1376 of 1903; 882, 1266 of 1906; 640, 698 of 1908.

* Secs. 33 to 38 inclusive are to apply to appeals from circuit courts, in civil proceedings, to the Supreme Court (see Ord. No. 10 of 1903, sec. 9).

† Secs. 33 to 38 inclusive are to apply to appeals from circuit courts in civil proceedings, to the Supreme Court (see Ord. No. 10 of 1903, sec. 9).

† 35. In every case in which notice of appeal shall be given to the Registrar of the District Court, such registrar shall forthwith transmit a copy of the record certified by him as authentic, to the Registrar of the High Court of the Transvaal. Such record shall include all oral evidence taken down in writing in manner aforesaid, and all other evidence whether taken by commission or affidavit and all documents and papers which shall have been produced and given in evidence. Copies of any documents and papers which shall have been produced and tendered in evidence and rejected shall, if required by the party producing the same, be authenticated and marked by the registrar as rejected.

Transmission of records in appeals.

† 36. It shall be lawful for the District Court to direct that the judgment, decree, or order appealed against, shall be carried into execution, or that execution thereof shall be suspended pending the said appeal as to such court may in each case appear to be most consistent with real and substantial justice. And in case such judgment, decree, or order shall be carried into execution the party respondent shall, before the execution of such judgment, decree, or order enter into good and sufficient security to be approved by the registrar of the said District Court for the due performance of such judgment, decree, or order as the High Court of the Transvaal shall think fit to make thereon; and in case the execution of any judgment, decree, or order shall be suspended, pending the said appeal, the party appellant shall enter into good and sufficient security to be approved in the manner aforesaid for the due performance of such judgment, decree, or order as the High Court of the Transvaal shall see fit to make thereon: Provided that it shall be lawful for the High Court of the Transvaal for good and sufficient cause shown, to dispense with the security by this section required from the appellant or respondent, as the case may be.

How judgment appealed against to be dealt with pending appeal.

Security.

Security may be dispensed with.

† 37. No judgment, decree, or order made by the District Court by the consent of parties, or as to costs only, which by law are left to the discretion of the court, and no interlocutory order shall be subject to any appeal, except by leave of such court.

When appeal allowed from District Court.

† 38. Every appeal to the High Court of the Transvaal against any judgment, decree, or order of the District Court shall be heard before not less than three members thereof.

Quorum of members of court on appeal.

§ 39. It shall, and may be lawful for any person or persons being a party or parties to any civil suit or action depending in the High Court of the Transvaal, or before such court on appeal to appeal to His Majesty the King in His Privy Council against any final judgment, decree, or sentence of the said court, or against any rule or order made in any such civil suit or action having the effect of a final or definitive sentence; which

Appeals from High Court of Transvaal to Privy Council.

† Secs. 33 to 38 inclusive are to apply to appeals from circuit courts in civil proceedings, to the Supreme Court (see Ord. No. 10 of 1903, sec. 9).

‡ South Africa Act, sec. 106.

|| In Pr. 1900-1902 this word reads "definite", and in *Gazette* "definitive".

appeals shall be made subject to the rules, regulations, and † limitations following, that is to say:—In case any such judgment, decree, order, or sentence shall be given or pronounced for or in respect of any sum or matter at issue above the amount or value of £2,000 sterling; or in case such judgment, decree, order, or sentence shall involve directly or indirectly any claim, demand, or question to or respecting property, or any civil right amounting to or of the value of £2,000 sterling, the person or persons feeling aggrieved by any such judgment, decree, order, or sentence of the said High Court may, within thirty days next after the same shall have been pronounced, made, or given, apply to the said court by petition for leave to appeal therefrom to His Majesty the King, in His Privy Council; and in case such leave to appeal shall be prayed by the party or parties who is or are adjudged to pay any sum of money, or perform any duty the said court shall, and is hereby empowered, either to direct that the judgment, decree, or sentence appealed from shall be carried into execution, or that the execution thereof shall be suspended, pending the said appeal as to the said court may in each case appear to be most consistent with real and substantial justice. And in case the said court shall direct such judgment, decree, order, or sentence to be carried into execution, the person or persons in whose favour the same shall be given shall before the execution thereof enter into good and sufficient security to be approved by the said court for the due performance of such judgment or order as His Majesty the King in His Privy Council shall think fit to make thereupon; or in case the said court shall direct the execution of any judgment, decree, order, or sentence to be suspended pending the said appeal, the person or persons against whom the same shall have been given shall in like manner and before any order for the suspension of any such execution is made enter into good and sufficient security to be approved by the said court for the due performance of such judgment or order as His Majesty the King shall think fit to make thereupon; and in all cases security shall be given by the party or parties appellant to the satisfaction of the said High Court in term time or one of the members thereof in vacation for the prosecution of the appeal and for the payment of all such costs as may be awarded by His Majesty to the party or parties respondent: and if such last-mentioned security shall be completed within two months from the date of such petition for leave to appeal then and not otherwise the said High Court shall allow the appeal and the party or parties appellant shall be at liberty to prefer and prosecute his her or their appeal to His Majesty in His Privy Council in such manner and under such rules as are observed in appeals made to His Majesty from his Colonies.

40. In all cases of appeal allowed by the said High Court or by His Majesty, the registrar of the said court shall certify and transmit to His Majesty in His Privy Council a true and

† See also Order of His Majesty in Council dated 15th Sept., 1902.

exact copy of all evidence proceedings judgments decrees and orders had or made in such cases so far as the same have relation to the matter of appeal such copies to be certified under the seal of the said court.

41. The High Court shall in all cases of appeal to His Majesty conform to and execute such judgments or orders as they shall think fit to make in the premises in such manner as any original judgment decree or order or rule by the said High Court could or might have been executed.

How judgments of the Privy Council on appeals to be executed.

42. All and singular the rules and orders relating to the practice and procedure in the High Court of the late South African Republic in force at the date of the annexation of the said Republic to His Majesty's Dominions shall govern the practice and procedure in the High Court of the Transvaal and the District Court until repealed altered or amended by the members of the said court in so far as the same are not inconsistent with the provisions of this Proclamation; subject however to such changes and adaptations as may be necessary for the purpose of this Proclamation.

Rules and orders of High Court of the late South African Republic to be in force until repealed or amended.

43. The Governor shall by notice in the *Gazette* notify to the inhabitants of this Colony the time when the courts hereby established will be open and then and from thenceforth the jurisdiction in all civil matters and proceedings vested in the Special Criminal Courts at Pretoria and Johannesburg shall be absolutely abolished cease and determine; provided nevertheless that all decrees judgments and sentences heretofore made by the said courts shall to all intents and purposes be as binding conclusive good valid and effectual as if this Proclamation had not been passed; and every civil suit action complaint matter or thing which shall be depending in such last-mentioned courts or in the High Court of the late South African Republic shall and may be proceeded upon in the High Court of the Transvaal instituted under and by virtue of this Proclamation; and all proceedings which shall thereafter be had in such action or suit or other matter shall be conducted in like manner as if such action or suit or other matter had been originally commenced in the said High Court instituted under these presents. And all the records minutes and proceedings whatsoever of and belonging to the said High Court established in the late South African Republic shall from and immediately after the opening of the said High Court of the Transvaal established by this Proclamation be delivered over and deposited for safe custody in the said court; and all parties concerned shall and may have recourse to the said records and proceedings and to any other records or proceedings of the said court.

Abolition of civil jurisdiction of Special Criminal Courts at Pretoria and Johannesburg.

44. Subject to the provisions of this Proclamation whenever in any law of the late South African Republic which is in force in this Colony the Chief Justice or a Judge of the High Court of the South African Republic is required or empowered to do any act the Judge President or a Judge of the High Court of the Transvaal established by this Proclamation shall respectively be required or empowered to do the

Jurisdiction of High Court and District Court in respect of certain existing laws.

like; and whenever in any such law the aforesaid High Court of the South African Republic is required or empowered to do any act the High Court of the Transvaal established under this Proclamation shall be required and empowered to do the like.

Jurisdiction conferred on future Supreme Court conferred on High Court of Transvaal.

45. Wherever by any Proclamation heretofore issued jurisdiction is conferred on the Supreme Court of the Transvaal to be established or on any judge thereof in chambers such jurisdiction shall be exercised by the High Court of the Transvaal established under this Proclamation or any member thereof in chambers respectively; provided that the jurisdiction conferred as aforesaid on the said Supreme Court may be exercised by the District Court in all matters within its jurisdiction.

Practitioner's rights prior to establishment of court.

46. Notwithstanding anything to the contrary in sections *ten* and *eleven* or any other provisions of* this Proclamation it shall be lawful for any person who is entitled under this Proclamation to be admitted to practise as an advocate or attorney of the High Court of the Transvaal to practise as such advocate or attorney before and up to the date of the first day of sitting of the said court, pending and subject to his admission hereafter as such advocate or attorney as the case may be.

Repeal of laws.

47. All laws inconsistent with the provisions of this Proclamation are hereby repealed.

Title of Proclamation.

†48. This Proclamation may for all purposes be cited as the Administration of Justice Proclamation 1902.

SCHEDULE "A".

I,..... do swear that I will be faithful and bear true allegiance to His Majesty King Edward VII., His Heirs and Successors according to law. So help me God.

I,..... do swear that I will well and truly serve His Majesty King Edward VII. in the Office of Judge President of the High Court of the Transvaal (or Judge thereof as the case may be), and that I will do right to all manner of people after the Laws and Usages of this Colony without fear, affection, favour, or ill-will. So help me God.

SCHEDULE "B".

In the High Court of the Transvaal.

I,..... do swear that I will be faithful and bear true allegiance to His Majesty King Edward VII., His Heirs and Successors according to law. So help me God.

Sworn before me at my Chambers this

* In Pr. 1900-1902 this word reads "in", but see *Gazette*.

† As in *Gazette*, but omitted in Pr. 1900-1902.

(Name of member of court before whom oath is taken.)

I.....
do swear that I will well and truly serve His Majesty King Edward VII. in the
Office of (Registrar) of the High Court of the Transvaal.
So help me God.

Sworn before me at
my Chambers this

.....
(Name of member of court before whom oath is taken.)

SCHEDULE "C".

In the High Court of the Transvaal.

I.....
do swear that I will truly and honestly demean myself in the practice of an
(advocate or attorney as the case may be), according to the best of my knowledge
and ability.

So help me God.

Sworn in open Court

this.....day of.....

.....
Registrar.

I.....
do swear that I will be faithful and bear true allegiance to His Majesty King
Edward VII., His Heirs and Successors according to law.

So help me God.

Sworn in open Court

this.....day of.....

PROCLAMATION No. 15 OF 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR.

(Dated 10th April, 1902.)

TO INTERPRET AND SHORTEN THE LANGUAGE OF PROCLAMATIONS,
LAWS, ETC., IN FORCE IN THE TRANSVAAL.Proclamation
(Trans.) No.
15 of 1902.

Preamble.

WHEREAS it is desirable to interpret and shorten the language of Laws now or hereafter in force in this Colony:

Now therefore in virtue of the authority in me vested I do hereby declare, proclaim and make known as follows:—

All laws to be
interpreted
according to
definitions in
this Procla-
mation.

1. In the interpretation of all laws as the expression is defined in the next succeeding section made since the annexation of the Transvaal to the Crown, and hereafter to be made and of all bye-laws, rules, regulations or orders made under the authority of any such law the definitions and other provisions in this Proclamation contained shall, unless the contrary intention appears, be adopted and applied.

Definition of
terms.

2. The terms following between *inverted commas* shall be read and taken to mean as follows:—

“Governor” shall mean the officer for the time being administering the Government of this Colony.

“Christian name” any name prefixed to the surname whether received at Christian baptism or not.

“District” the area subject to the jurisdiction of the Court of any Resident Magistrate.

“Month” a calendar month.

“Gazette” the *Government Gazette* for the Transvaal.

The expression “Oath” and “Affidavit” shall in the case of persons for the time being allowed by law to affirm or declare instead of swearing include affirmation and declaration, and the expression “Swear” shall in the like case include affirm and declare.

“Law” shall mean and include any Proclamation, Ordinance or enactment duly made and published by the person or body of persons having for the time being authority to make laws for the Transvaal, and any law or resolution of the Volksraad of the late South African Republic.

“Person” shall include Joint Stock Company, Municipal Corporation, or any body of persons whether incorporated or not.

Notice in
Gazette.

3. When any act matter or thing is by any law directed to be done by the Governor the notification that such act, matter or thing has been done may be by notice in the *Gazette*.

Writing or
printing.

4. In every law expressions relating to writing shall, unless the contrary intention appears, be construed as including references to typewriting, printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

*5. When any particular number of days is prescribed for the doing of any act or for any other purpose the same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day should happen to fall on a Sunday, or any other day appointed by any law or by the Governor under the authority of any law as a public holiday or as a solemn fast or day of thanksgiving, in which case the time shall be reckoned exclusively of the first and of every other such day also.

How number of days to be reckoned.

6. When any bye-laws, regulations, rules or orders are authorized by any law to be made by the Governor or any local authority, public body or person, with the approval of the Governor, such bye-laws, regulations, rules or orders shall be published in the *Gazette*, and production of a copy of the *Gazette* containing a notice of the making or approval thereof (as the case may be) by the Governor shall be sufficient evidence of such making or approval.

Copy of *Gazette* proof of bye-laws, etc.

7. (1) Where a law repeals and re-enacts with or without modifications any provisions of a former law references in any other law to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

Effect of repeal.

(2) Where any law repeals any other law then, unless the contrary intention appears, the repeal shall not

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any law so repealed or anything duly done or suffered under the law so repealed; or

(c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any law so repealed; or

(d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any law so repealed; or

(e) affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; And any such investigation, legal proceeding or remedy,

may be instituted, contained or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing law had not been passed.

8. When a law repeals wholly or partially any former law and substitutes provisions for the law so repealed, the repealed law shall remain in force until the substituted provisions come into operation.

When repeal takes effect.

9. (1) Where a law confers a power, or imposes a duty then unless the contrary intention appears the power may be exercised, and the duty shall be performed from time to time as occasion requires.

Construction of provisions as to exercise of powers and duties.

* As amended by Ord. No. 37 of 1903, sec. 5.

(2) Where a law confers a power or imposes a duty on the holder of a public office as such, then, unless the contrary intention appears the power may be exercised, and the duty shall be performed from time to time by the holder for the time being of the office.

(3) Where a law confers a power to make any rules, regulations or bye-laws, the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner, and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations or bye-laws.

Singular and plural male and female.

10. Words in the singular number shall include the plural number and words in the plural number shall include the singular number and words of the masculine gender shall include females.

Meaning of "Rules of Court."

11. In every law, unless the contrary intention appears the expression "Rules of Court", when used in relation to any court shall mean rules made by the authority having for the time being, power to make rules, or orders regulating the practice and procedure of such court. The power of the said authority to make rules of court as above defined shall include a power to make rules of court for the purpose of any law directing or authorizing anything to be done by rules of court.

Meaning of "Service by Post."

12. Where any law authorizes or requires any document to be served by post, whether the expression "serve", or the expression "give", or "send", or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing prepaying and posting a registered letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

References to the Crown.

13. In every law, references to the Sovereign reigning at the time of the passing of the law, or to the Crown, shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being.

Measurement of distances.

14. In the measurement of any distance for the purpose of any law that distance shall unless the contrary intention appears, be measured in a straight line on a horizontal plane.

Commencement of law, etc.

15. Where any law or any order, warrant, scheme, letters patent, rules, regulations or bye-laws, made, granted, or issued under a power granted by any such law, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.

Exercise of statutory powers between passing and commencement of law.

16. Where a law is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any order, warrant, scheme, letters patent, rules, regulations, or bye-laws to give notices, to prescribe forms, or to do any other thing for the purposes of the law, that power may, unless the contrary intention appears, be exercised at any time after the passing of the law, so far as may be necessary or

expedient, for the purpose of bringing the act into operation at the date of the coming into operation thereof, subject to this restriction that any instrument made under the power, shall not, unless the contrary intention appears in the law, or the contrary is necessary for bringing the law into operation **come into operation* until the law comes into operation.

17. The terms hereinafter set forth when they occur in any law (as defined by section *two* of this Proclamation) of the late South African Republic in force in this Colony, shall, unless otherwise expressly provided, be read and taken to mean as follows:—

Definition of terms in laws of the late South African Republic in force in this Colony.

“Zuid Afrikanische Republiek”, “Republiek”, “Staat”, or any like expression shall be read and taken to mean “this Colony”.

“Staats Procureur” or any like expression shall mean the Legal Adviser to the Transvaal Administration.

“Staats Secretaris” or any like expression shall mean the Secretary to the Transvaal Administration.

“Staats President” or any expression denoting the Head of the late South African Republic shall be taken to include the Governor of this Colony.

“Landdrost” shall mean Resident Magistrate.

“*Staatscourant*” shall mean the *Government Gazette* in this Colony.

“Publieke Aanklager” shall mean and include the Legal Adviser to the Transvaal Administration or any person appointed to prosecute for and on behalf of the Crown.

When *ever*† any act is required or authorized to be done by any of the said laws, or whenever any process of court is required to be taken out “in the name and on behalf of the people of the South African Republic” it shall be deemed to be required or authorized to be done or taken out in the name and on behalf of His Majesty King Edward VII.

18. All powers, authorities and functions, which by any law of the late South African Republic were required to be exercised by the President of the said State, either individually or in conjunction with the Executive Council thereof, or which were required to be exercised by the said Executive Council independently, or by the Government, may as far as the same are capable of being exercised under the change of Government in the Transvaal be exercised by the Governor.

Governor to have powers of late President, Executive and Government.

19. This Proclamation may be cited for all purposes as “The Interpretation of Laws Proclamation, 1902”.

Short title.

* Words in italics appear in *Gazette*, but are omitted in Pr. 1900–1902.

† As in *Gazette*; in Pr. 1900–1902 this word reads “when”.

*Read out 21 of 1904 with
this*

PROCLAMATION No. 16 OF 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR.

(Dated 10th April, 1902.)

FOR ALTERING, AMENDING, AND DECLARING IN CERTAIN
RESPECTS THE LAW OF EVIDENCE WITHIN THIS COLONY.

Preamble.

WHEREAS it is expedient to alter, amend, and declare in certain respects the law of evidence within this Colony;

Now therefore by virtue of the authority in me vested, I do hereby declare, proclaim, and make known as follows:—

No person to be excluded from giving evidence except under this Proclamation.

1. From the taking effect of this Proclamation every person not expressly excluded by this Proclamation from giving evidence shall be competent and compellable to give evidence in any court in this Colony.

The court to decide on admissibility of evidence.

2. It shall be competent for the court alone in which any case may be depending to decide upon all questions concerning the competency of any witness or the admissibility of any evidence; and in all cases which shall be tried by a jury it shall be competent for such jury alone to determine as to the effect of any evidence admitted by the court and as to the degree of credit to be attached thereto.

Incompetency from insanity and intoxication.

3. No person appearing or proved to be afflicted with idiocy, lunacy, or insanity, or labouring under any imbecility of mind arising from intoxication or otherwise whereby he is deprived of the proper use of reason, shall in any case be competent to give evidence while under the influence of any such malady or disability.

Witnesses to be examined on oath.

4. It shall not in any case be competent to examine any person other than such as are mentioned in sections *six* and *seven* of this Proclamation as a witness except upon oath.

Form of oath or affirmation.

5. In all cases the oath to be administered to any person as a witness, shall be administered in the form which shall most clearly convey to him the meaning of the oath, and which he shall consider to be binding on his conscience.

Affirmation substituted for oath in case any person objects to taking oath.

6. In all cases where any person who is or may be required to take an oath shall object to do so, it shall be lawful for such person to make an affirmation in the words following:—“I do truly affirm and declare that” (*here insert the matter to be affirmed or declared*) which affirmation or declaration shall be of the same force and effect as if such person had taken such oath. And every person authorized, required, or qualified by law to take or administer an oath, shall accept in lieu thereof, an affirmation or declaration as aforesaid.

The same penalties, punishments, and disabilities which are respectively in force and are attached to any neglect, refusal, and false or corrupt taking or subscribing of any such oath as aforesaid, shall apply and attach in like manner in respect of the neglect, refusal, and false or corrupt making or subscribing respectively, of any such affirmation or declaration as in this section mentioned.

Penalties for making false affirmation.

7. Persons produced for the purpose of giving evidence, who, from ignorance arising from youth, defective education, or other cause shall be found not to understand the nature, or recognize the religious obligation of an oath, shall, and may be admitted to give evidence in any court within this Colony without being sworn or being upon oath or affirmation; provided always, that before any such person shall proceed to give evidence, the judge or magistrate before whom he shall be offered as a witness, shall admonish him to speak the truth the whole truth and nothing but the truth, and shall further administer, or cause to be administered to such person, any form of admonition which shall, either from his own statement, or other source of information appear to be calculated to impress his mind and bind his conscience, and which shall not as being of an inhuman, immoral, or irreligious nature be obviously unfit to be administered; and provided also, that any such person who shall wilfully and falsely state anything which, if sworn, would have amounted to the crime of perjury, shall be deemed to have committed the said crime, and shall, upon conviction, be subject to such punishment as is or shall be by law provided for in regard to the said crime.

When unsworn testimony admissible.

8. Where any person who has been an accomplice either as principal or accessory in the commission of any crime or offence charged in the indictment or complaint under trial, shall be produced as a witness by and on the part of the Public Prosecutor, and shall submit to be sworn as a witness, and shall fully answer to the satisfaction of the court all such lawful questions as shall be put to him while under examination such person shall thereby be absolutely freed and discharged from all liability to prosecution for any such crime or offence, either at the instance of the Public Prosecutor or of any private party; or when he has been produced as a witness by and on the part of any private prosecutor from all prosecution for such crime or offence at the instance of such private prosecutor. And it shall and may be lawful for the said court thereupon to cause such discharge to be duly entered on the record of the proceedings in such trial; provided always that no such accomplice produced as a witness by and on the part of any private prosecutor shall in any case be bound or legally compellable to answer any question whereby he may criminate himself in respect of any crime or offence charged in the indictment, information, or complaint under trial, unless there shall be produced to him, and put on record, a writing under the hand of the officer who by law is entitled to prosecute at the public instance in such court, discharging such accomplice from all liability to prosecution at the instance of the Public Prosecutor for such crime or offence.

Freedom from liability to prosecution of accomplices giving evidence.

Accomplice entitled to require from prosecutor a writing under his hand discharging such accomplice from liability to prosecution.

Evidence of accomplice not to be used against him if he should thereafter be tried for the offence.

But accomplice is notwithstanding liable to penalties of perjury and evidence on charge of perjury not affected.

Conviction on single evidence of accomplice provided the crime is proved *alivunde*.

Evidence of accused and husband and wife in criminal proceedings.

9. Where any such accomplice, as aforesaid, in any crime or offence charged in any indictment or complaint shall have been produced as a witness by and on the part of the Public Prosecutor, or of any private prosecutor (by whom there shall have been obtained from such officer, as aforesaid, a written discharge of such accomplice from liability to prosecution as aforesaid) and shall have given evidence at the trial of such indictment or complaint, it shall not be competent to give in evidence against such accomplice if he shall thereafter be tried for such crime or offence, any part of the testimony which shall have been so given by him at the said trial, as aforesaid; provided always that nothing herein contained shall extend or be construed to free or exempt any such accomplice who shall be guilty of wilful and corrupt perjury while under examination as a witness in any such trial, as aforesaid, from any penalties or forfeitures to which persons guilty of wilful and corrupt perjury are, or shall be liable by any law of this Colony; or to render incompetent or inadmissible any evidence which would otherwise be competent and admissible in the trial of such accomplice on a charge of wilful and corrupt perjury on his examination as a witness in any such trial as aforesaid.

10. Any court or jury in any case which shall be tried by such court or jury, respectively, may convict any person who shall be so tried before any such court or jury of any crime or offence charged in the indictment or complaint under trial on the single evidence of any such accomplice as aforesaid; provided always that such crime, or offence, shall by competent evidence, other than the single and unconfirmed evidence of such accomplice, be proved to the satisfaction of such court or jury respectively, to have been actually committed.

11. Every person charged with an offence, and the wife or husband as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person; provided as follows:—

(a) A person so charged shall not be called as a witness except upon his own application.

(b) The wife or husband of the person charged shall not, save as in the next succeeding section mentioned, be called as a witness except upon the application of the person so charged.

(c) A person charged and being a witness in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged.

(d) A person charged and called as a witness in pursuance of this section shall not be asked, and if asked, shall not be required to answer any question tending to show that he has committed, or been convicted of, or been charged with any offence other than that wherewith he is then charged or is of bad character, unless

- (i) he has personally, or by his advocate, asked questions of the witnesses with a view to establish his own good character or the nature or conduct of the defence is such as to involve imputation of the character of the prosecutor or the witnesses for the prosecution; or
- (ii) he has given evidence against any other person charged with the same offence.
- (e) Every person called as a witness in pursuance of this section shall, unless otherwise ordered by the Court, give his evidence from the witness box or other place from which the other witnesses give their evidence.
- (f) Nothing in this section shall affect any right of the person charged to make a statement without being sworn. Provided that if the person charged gives evidence on his own behalf at the preparatory examination such evidence may be read and put in at the trial of such person by the prosecutor.

* 12. The wife or husband of the person charged is competent and compellable to give evidence either for the prosecution or defence, and without the consent of the person charged, where such person is prosecuted for any offence against the person or separate property of the wife or husband of such person.

Evidence by husband and wife.

13. No husband shall be compelled to disclose any communication made to him by his wife during the marriage, and no wife shall be compelled to disclose any communication made to her by her husband during the marriage.

Husband and wife not compellable to disclose communications between them.

* 14. No husband or wife after the dissolution of their marriage by a competent court shall in any civil or criminal proceeding be compelled to give evidence as to any matter or thing which occurred during the subsistence of their said marriage, and as to which such husband or wife could not have been compelled to give evidence if their said marriage had still continued to subsist at the time when such proceeding is heard.

Husband and wife privileged after divorce as to matters occurring during the subsistence of the marriage as to which they would have been privileged during the marriage.

15. No person shall in any civil or criminal proceeding be compelled to answer any question or to give any evidence, which question or evidence the husband or wife of such person if under examination as a witness, in such proceeding might lawfully refuse, and could not be compelled to answer or give.

No witness compellable to answer questions which the witness' husband or wife might decline.

16. No legal practitioner duly qualified to practise in any court within this Colony or elsewhere shall in any legal proceeding be competent to give evidence against any person

Privilege of professional advisers.

* See Ord. No. 21 of 1904, sec. 1 (evidence in case of bigamy).

by whom he has been professionally employed or consulted without the consent of such person, as to any fact, matter, or thing, as to which such legal practitioner by reason of such employment, or consultation, and without such consent would not be competent to give evidence in any similar proceeding depending in the Supreme Court of Judicature in England; provided always that no such legal practitioner shall in any proceeding by reason of any such employment or consultation, be incompetent or not legally compellable to give evidence as to any fact, matter, or thing, relative to or connected with the commission of any crime or offence for which the person by whom such legal practitioner has been so employed or consulted, is in such case prosecuted; and which fact, matter, or thing, has come to the knowledge of such legal practitioner before he shall have been professionally employed or consulted for or with reference to the defence of such person against such prosecution.

Admissibility
of confessions
by accused

if freely and
voluntarily
made without
undue
influence

and if judicial
after due
caution.

Admissibility

Conviction on
confession if
the crime has
been proved
aliunde.

17. Any confession of the commission of any crime or offence which shall be proved by competent evidence to have been made by any person accused of such crime or offence whether before or after his apprehension whether on a judicial examination or after commitment and whether reduced into writing or not shall in every case be admissible evidence against such person; provided always that such confession shall be proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto; and provided also that when such confession shall have been made on a judicial examination before any magistrate on any criminal charge such person shall previously according to law have been cautioned by the said magistrate that he is not obliged in answer to the charge against him to make any statement which may criminate himself and that what he shall then say may be used in evidence against him; provided always that no deposition made by any person on any judicial examination under the provisions of sections *one hundred and sixty* and *one hundred and sixty-three* of Law No. 13, 1895, shall be admissible evidence in any prosecution of such person for any crime or offence other than perjury committed by him on such examination.

18. It shall be lawful for any court or jury by which any person prosecuted for any crime or offence shall and may lawfully be tried respectively to convict such persons of any crime or offence charged in the indictment or complaint under trial in respect and by reason of any such confession of the commission of such crime or offence which shall be proved to the satisfaction of such court or jury respectively to have been made as aforesaid although not confirmed by any other evidence; provided always that such crime or offence shall by competent evidence other than the single and unconfirmed evidence of such confession be proved to the satisfaction of such court or jury respectively to have been actually committed.

19. It shall be lawful to admit evidence of any fact otherwise admissible in evidence notwithstanding that such fact has been discovered and come to the knowledge of the witness who shall give evidence respecting it only in consequence of information given by the person under trial in any confession or deposition which by law shall not be admissible in evidence against him in such trial. Admissibility of facts discovered by means of inadmissible confession.
20. No confession which may be made by any person shall in any case be admissible as evidence against any other person. Confession not admissible against other persons.
Sufficiency of one witness in civil suits.
21. It shall be lawful for the court or jury by which any civil suit shall be tried to find on any issue of fact and in respect of such finding for the court to give judgment for or against any party to such suit on the evidence of any single competent and credible witness. Sufficiency of one witness in criminal cases.
22. It shall be lawful for the court or jury by which any person prosecuted for any crime or offence shall be tried respectively to convict such person of any crime or offence charged in the indictment or complaint under trial on the single evidence of any competent and credible witness; provided always that it shall not be competent for any such court or jury to convict any person of the crime of perjury on the evidence of any one witness unless in addition to and independent of the testimony of such witness some other competent and credible evidence as to the guilt of such person shall be given to such court or jury. Inadmissibility of irrelevant evidence.
23. No evidence as to any fact, matter, or thing shall in any case be admissible which is irrelevant or immaterial and cannot conduce to prove or disprove any point or fact in issue in such case. Evidence of character when admissible.
24. No evidence as to the character of any of the parties to any case civil or criminal or as to the character of any woman on whose person any rape or assault with intent to commit a rape shall in any prosecution for rape or for assault with intent to commit a rape be charged to have been committed shall in any such case be admissible or inadmissible which would be inadmissible or admissible in any similar case depending in the Supreme Court of Judicature in England. Admission of facts in issue on the record.
25. It shall not be necessary for any party in any case to give evidence to prove nor shall it be competent for any such party to give evidence to disprove any fact or facts admitted on the record of such case. Necessity of best evidence of fact to be proved
26. Every party on whom in any case it shall be incumbent to prove any fact, matter, or thing shall be bound to give the best evidence of which from its nature such fact, matter, or thing shall be capable; and no evidence as to any such fact, matter, or thing shall be admissible in any case in which it is in the power of the party who proposes to give such evidence to produce or cause to be produced better evidence as to such fact, matter, or thing except by consent of the adverse party to the suit or when such adverse party shall by law be precluded from disputing any such fact, matter, or thing by reason of any admission proved to have been made by such party. unless waived by consent or admission of opposite party.

Proof of appointment to public office.

27. Any evidence which would be admissible and if credible would be deemed in any case depending in the Supreme Court of Judicature in England to be in law sufficient proof of the appointment of any person to any public office or of the authority of any person to act as a public officer shall be admissible, and if credible shall be deemed to be in law sufficient proof of such appointment or authority.

Certified copies or extracts of documents admissible.

28. Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, any copy thereof or extract therefrom shall be admissible in evidence in any court of justice or before any person now or hereafter having by law or by consent of parties authority to hear evidence, provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted, which officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same not exceeding one shilling for every hundred words.

Production of official documents.

29. Any original document in the custody or under the control of any Government officer by virtue of his office shall only be produced in any proceeding before any court

(a) in criminal cases upon an order of the Legal Adviser to the Transvaal Administration;

(b) in all other cases upon an order of the court or judge before which the case is pending.

Copies of such documents sufficient.

30. Except when the original is ordered to be produced as in the preceding section, provided it shall be sufficient to produce a copy of or extract from such document certified as a true copy by the head of the department in whose custody or under whose control such document is. Such copy or extract so certified shall be receivable in evidence before any court, and shall be of like value and effect as the original document.

Charges for copying and certifying.

31. In civil cases there shall be payable by the party applying for any such copy or extract a stamp duty of five shillings, together with a further duty of one shilling in respect of each hundred words or any part thereof contained in such copy or extract. The stamps shall be affixed to the copy or extract and shall be cancelled by the officer certifying the same.

Head of department need not attend to produce.

32. It shall not be necessary for any head of a Government department or office to appear in person to produce any original document in his custody or under his control as such officer, but it shall be deemed sufficient if such document is produced by some person authorized by him so to do. Certified copies or extracts may be handed in to the court by the party who desires to avail himself of the same.

Punishment for false certificate.

33. If any officer authorized or required by this Proclamation to furnish any certified copies or extracts shall wilfully certify any document as being a true copy or extract knowing that the same is not a true copy or extract, as the case may be,

he shall be liable upon conviction to imprisonment with or without hard labour for any term not exceeding eighteen months.

34. The entries in ledgers, daybooks, cash-books, and other account books of any bank, shall be admissible in all legal proceedings as prima facie evidence of the matters, transactions, and accounts therein recorded, on proof being given by the affidavit in writing of one of the directors, managers, or officers of such bank, or by other evidence that such ledgers, daybooks, cash-books, or other account books are or have been the ordinary books of such bank, and that the said entries have been made in the usual and ordinary course of business, and that such books are in or come immediately from the custody or control of such bank.

Entries in certain books admissible in evidence in certain cases.

35. Copies of all entries in any ledgers, day-books, cash-books or other account books used by any such bank may be proved in all legal proceedings as evidence of such entries without production of the originals, by means of the affidavit of a person who has examined the same, stating the fact of the said examination and that the copies sought to be put in evidence are correct.

Examined copies also admissible.

36. Provided always that no ledger, day-book, cash-book, or other account book, of any such bank, and no copies of entries therein contained, shall be adduced or received in evidence under this Proclamation unless ten days' notice in writing or such other notice as may be ordered by the court, containing a copy of the entries proposed to be adduced, and of the intention to adduce the same in evidence, shall have been given by the party proposing to adduce the same in evidence to the other party or parties to the said legal proceeding, and that such other party or parties is or are at liberty to inspect the original entries and the accounts of which such entries form a part.

Notice that such evidence will be adduced must be given and liberty given to inspect. c

37. On the application of any party to any legal proceedings who has received such notice, the court or any member thereof may order that such party be at liberty to inspect and to take copies of any entry or entries in the ledger, day-books, cash-books or other account books of any such bank relating to the matters in question in such legal proceedings, and such orders may be made by such court or member thereof at its or his discretion, either with or without summoning before it or him such bank or the other party or parties to such legal proceedings, and shall be intimated to such bank at least three days before such copies are required.

Party receiving notice may apply to court or a member thereof for liberty to inspect.

38. On the application of any party to any legal proceedings who has received notice, the court or any member thereof may order that such entries and copies mentioned in the said notice shall not be admissible as evidence of the matters, transactions, and accounts recorded in such ledgers, day-books, cash-books, and other account books.

Court may order that entries and copies shall not be admissible.

Bank not compelled to produce any books unless ordered by court or a member thereof.

39. No bank shall be compelled to produce the ledgers, day-books, cash-books, or other account books of such bank in any legal proceedings unless the court or any member thereof specially orders that such ledgers, day-books, cash-books, or other account books should be produced.

Proclamation not to apply to proceedings to which bank is a party.

40. Nothing in sections *thirty-four to thirty-nine* inclusive contained shall apply to any legal proceedings to which any bank whose ledgers, day-books, cash-books, or other account books may be required to be produced in evidence shall be a party.

Examination of witnesses *de bene esse*.

41. Nothing herein contained shall extend or be construed to prevent any court from allowing the deposition of any witness who, by virtue of any rule or order of such court, has been examined *de bene esse*, to be admitted as evidence at the trial of any civil case in which such rule or order shall have been made.

Admissibility in civil cases of testimony of absent or deceased witness.

42. The testimony of a deceased or absent witness who has been examined on oath on the trial of any former civil action between the same parties shall be admissible in every case in which, and may be proved and given in evidence in the same manner in which, the testimony of such deceased or absent witness would be admissible, and might be proved and given in evidence in any similar case depending in the Supreme Court of Judicature in England.

Admissibility of dying declarations.

43. The declaration made by any deceased person upon the apprehension of death shall be admissible in evidence in every case, and shall not be admissible in evidence in any case in which such declaration would be admissible or inadmissible in any similar case depending in the Supreme Court of Judicature in England.

Hearsay evidence.

44. No evidence which is of the nature of hearsay evidence shall be admissible in any case in which such evidence would be inadmissible in any similar case depending in the Supreme Court of Judicature in England.

Witness excused from answering questions the answers to which would expose him to penalties or degrade his character.

45. No witness, except as provided in this Proclamation, shall be compellable to answer any question which such witness, if he were under examination in any similar case depending in the Supreme Court of Judicature in England, would not be compellable to answer by reason that the answer of such witness might have a tendency to expose him to any pains, penalty, punishment, or forfeiture, or to a criminal charge, or to degrade the character of such witness.

Witness not excused from answering question by reason that the answer would establish a civil claim against him.

46. It shall not be lawful for a witness to refuse to answer a question relevant to the issue the answering of which has no tendency to accuse himself or to expose him to penalty or forfeiture of any nature whatsoever, by reason only or on the sole ground that the answering of such question may establish or tend to establish that he owes a debt or is otherwise subject to a civil suit.

47. No witness shall, except as in this Proclamation provided, be compellable or permitted to give evidence as to any fact, matter, or thing, or as to any communication made to or by such witness as to which, if the case were depending in the Supreme Court of Judicature in England, such witness would not be compellable or permitted to give evidence by reason that such fact, matter or thing, or communication, on grounds of public policy and from regard to public interest, ought not to be disclosed and is privileged from disclosure.

Privilege from disclosure of facts on the ground of public policy or from regard to the public interest.

48. It shall in every case be competent for any party to impeach or support the credibility of any witness produced against or for such party in any manner and by any evidence in and by which, if the case were depending in the King's Bench Division of the High Court of Justice in England, the credibility of such witness might be impeached or supported by such person, and in no other manner and by no other evidence whatever.

Impeachment and support of witness' credibility.

49. No person being a party to any suit, action, or proceeding, and who shall be adduced as a witness therein in his own behalf, shall (except as hereinafter excepted) be entitled in the taxation of any costs which may be awarded against the opposite party to any expenses as a witness: Provided that it shall be competent for the court, upon the application of any such party so adduced as a witness, to direct at its discretion that such party shall be allowed his expenses in case the said court shall be of opinion that such party was a necessary witness.

Party to a suit not entitled to expenses when giving evidence in their own behalf.

50. Any party to any suit, action, or proceeding who shall be adduced as a witness by the opposite party shall be entitled to his expenses as a witness in like manner as any other witness.

When adduced by opposite party expenses receivable.

51. Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses; and such writings and the evidence of witnesses respecting the same may be submitted to the court or jury (as the case may be) in any case, civil or criminal, as evidence of the genuineness or otherwise of the writing in dispute.

Evidence of genuineness of disputed writings.

*52. Whenever, in any proceeding whatever, it may be necessary to prove the trial and conviction or acquittal of any person charged with any indictable offence, it shall not be necessary to produce the record of the conviction or acquittal of such person, or a copy thereof, but it shall be sufficient that it be certified or purport to be certified under the hand of the clerk of the court or other officer having the custody of the records of the court where such conviction or acquittal took place, or by the deputy of such clerk or other officer, that the paper produced is a copy of the record of the indictment, trial, conviction, and judgment or acquittal as the case may be, omitting the formal parts thereof.

In criminal proceedings certificate of conviction or acquittal of accused sufficient without production of record.

* As to proof of previous convictions see Ord. No. 20 of 1905, sec. 10.

Gazette
evidence in
certain cases.

53. Where, in any legal proceeding, proof is required of the contents of any law, Government Notice, or of any matter required to be published in the *Gazette*, a copy of the *Gazette* or a copy of such law, notice, or other matter purporting to be printed under the superintendence or authority of the Government Printer, shall, on its mere production, be evidence of the contents of such law, notice, or other matter as the case may be.

Who
empowered
to administer
oaths.

54. Every court, judge, justice of the peace, commissioner, arbitrator, or other person, now or hereafter having, by law or by consent of parties, authority to hear evidence, is hereby empowered to administer an oath, affirmation, or admonition respectively as aforesaid to all such witnesses as are legally called before them respectively.

Where not
otherwise
provided law
of England to
be followed.

55. In any case not provided for in this Proclamation, the law as to admissibility of evidence and the competency examination and cross-examination of witnesses in force in the Supreme Court of Judicature in England shall be followed in like cases by the courts of this Colony.

Repeal of
former laws.

56. From the taking effect of this Proclamation, Law No. 5 of 1892, every other law, custom, usage, and practice heretofore in force within this Colony, inconsistent with the provisions of this Proclamation, are hereby repealed.

Short title.

57. This Proclamation may be cited as "The Law of Evidence Proclamation, 1902."

PROCLAMATION No. 17 OF 1902.

Proclamation
(Trans.) No.
17 of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR.

(Dated 10th April, 1902.)

CREATING THE OFFICE OF SHERIFF OF THE TRANSVAAL AND
REGULATING HIS DUTY.

By virtue of the authority in me vested, I do hereby declare, proclaim and make known as follows:—

1. The laws mentioned in Schedule "A" to this Proclamation, and so much of any other law as is repugnant to or inconsistent with the provisions hereof, shall be and are hereby repealed.

Laws
repealed.

2. The expression "Superior Court" shall include the High Court of the Transvaal, the Witwatersrand District Court, the Special Criminal Courts at Pretoria and Johannesburg, and the Supreme Court of the Transvaal, or any circuit thereof to be hereafter established.

Definition of
terms.

The expression "immovable property" shall include all fixed property as defined by the "Transfer Duty Proclamation, 1902".

3. It shall be lawful for the Governor, under his Hand and Seal, to appoint some fit and proper person to be Sheriff of the Transvaal.

Appointment
of sheriff.

4. The sheriff shall by himself or his sufficient deputies to be by him appointed and duly authorized under his hand and seal, and for whom he shall be responsible during his continuance in such office, execute all the sentences, decrees, judgments, writs, summonses, rules, orders, warrants, commands and processes of any superior court, and shall make a return of the same, together with the manner of execution thereof, to such court through the registrar thereof, and the plaintiff or defendant or their respective attorneys may at any time have an office copy of the said process, with the return thereto, at the cost of the party applying for the same. The sheriff shall receive and detain in prison all persons arrested by any order, writ or judgment of any superior court or committed to the custody of such sheriff by any such court or by any judge of the High Court of the Transvaal.

Appointment
of deputy
sheriffs.Duties of
sheriff and
his deputies.Execution of
process.Return of
process to the
registrar's
office.

5. The sheriff shall upon the appointment of a deputy transmit to the Registrar of the High Court of the Transvaal his name and place of abode, stating the district within which he is to act for the said sheriff, and shall cause a like notification to be published in the *Gazette*.

Names of
deputies to be
sent to the
Registrar of
the High
Court by
sheriff, and
to be
published in
the *Gazette*.

Sheriff not responsible for rescue or escape without his default.

Sheriff's duty in case of escape of arrested person.

When sheriff interested who to execute process.

Who to aid sheriff in execution of his duty.

What not to be seized.

What creditors entitled to benefit of executions already levied.

Process of Witwatersrand District Court may be sent to deputy sheriff.

Action against the sheriff to be brought within six months.

6. The sheriff shall not be answerable or responsible for the rescue or escape of any person out of his custody or out of the custody of his deputy on his way to prison, or after being lodged therein, where such rescue or escape shall happen without the default or connivance of the sheriff or his deputy; provided however that in case of any such rescue or escape the said sheriff or his deputy shall use all lawful means for the pursuit, apprehension and safe custody of any such person without any further warrant or authority whatever.

7. Whenever any superior court shall direct or award any process against the sheriff or award any process in any cause, matter or thing wherein the sheriff, on account of his being related to the parties or any of them, or by reason of any good cause or challenge which would be allowed against any sheriff in England, cannot or ought not by law to execute the same, in every such case the said superior court shall name and appoint some other fit person to execute and return the same, and the said process shall be directed to the person so to be named for that purpose, and the cause of such special proceedings shall be registered and entered on the records of the said court respectively.

8. All officials and inhabitants generally in this Colony shall aid the said sheriff in the execution of his duty when called upon and shall carry out his directions.

9. The sheriff or his deputy shall not take or seize in execution of any process

(a) the necessary bed or beds and bedding or wearing apparel of the person against whom the execution is levied and of his family;

(b) the supply of food and drink in the house sufficient for the needs of the family during one month;

(c) tools and implements of trade and the tools necessarily used in the cultivation of land in so far as the same do not exceed the value of £25;

(d) professional books, documents or instruments in so far as the same do not exceed the value of £25.

10. No creditor lodging any writ of execution with the sheriff or his deputy shall be entitled to share in, or receive any part of, the proceeds levied under any writ previously lodged, unless such creditor shall have lodged his writ at least ten days prior to the day of sale of the property attached under such previous writ.

11. All process issued from the Witwatersrand District Court may be transmitted or delivered by the attorney or party taking out the same to the deputy sheriff of the district or area in which such process is to be executed, and shall be made returnable to the said court, and shall be returned by such deputy sheriff to the registrar thereof.

12. No action shall be brought against the sheriff or any deputy sheriff for anything done or omitted to be done in the execution of his office, unless commenced within six calendar months after the act committed or omitted to be done.

13. In every case in which any prisoner shall be sentenced to death, it shall be lawful for the Governor, if he shall be satisfied that fitting arrangements for the same can be made within the gaol in which such prisoner shall for the time being be confined, to order by warrant under his hand that the sentence of death shall be carried into effect within the walls of such gaol.

Governor may direct sentence of death to be carried out within walls of gaol.

14. The sheriff or deputy sheriff charged with the execution, and the surgeon gaoler and such other officers of such gaol as the sheriff or deputy sheriff may require, shall be present at such execution, and any justice of the peace for the division in which such gaol may be situated, and any minister of religion residing therein, and such relatives of the prisoner or other persons as the sheriff or deputy sheriff may deem proper, may be admitted within such gaol for the purpose of being present at such execution.

Who required to be present at such execution and who may be admitted to witness execution.

15. As soon as may be after judgment of death has been executed on the offender, the surgeon of the gaol shall examine the body and shall ascertain the fact of death, and shall sign a certificate thereof and deliver the same to the sheriff or deputy sheriff; and all other officers who shall be present under the provisions of the preceding section, together with the sheriff or deputy sheriff, shall sign a declaration to the effect that judgment of death has been executed on the offender, and such certificate and declaration shall be forthwith transmitted to the Secretary to the Transvaal Administration to be filed of record in his office.

Surgeon to certify death and declaration to be signed by all persons present at execution.

*16. The judges of the High Court of the Transvaal shall have the power from time to time to frame such rules and regulations for the guidance of the sheriff and his deputies as may be deemed necessary, and to repeal, amend, and supplement any tariff of fees to be charged by deputy sheriffs.

Judges of High Court may frame rules of court.

17. The sheriff shall receive on behalf of the Government, in stamps to be affixed to the documents named therein, the fees set forth in Schedule "B" to this Proclamation.

Fees to Government.

18. Deputy sheriffs shall receive the fees allowed to them and specified in section *ten* of Law No. 12 of 1899.

Fees to deputy sheriff.

19. This Proclamation shall be styled for all purposes "The Sheriff's Proclamation, 1902," and shall take effect from and after the fifteenth day of April, 1902.

Short title.

SCHEDULE "A".

Law and Year.	Extent of Repeal.	Page in Statute Book.
Law No. 5, 1881	So much thereof as relates to the sale in execution of fixed property	985

SCHEDULE "B".

Fees to be paid to the Sheriff, on behalf of the Government, by means of stamps :
In proceedings in execution of real property under attachment.†

* For rules and tariff of fees, see Govt. Notice No. 503 of 1903 (*Gazette*, 22nd May, 1903, p. 1008).

† For fees see now Act No. 15 of 1909, Fourth Schedule.

Proclamation
(Trans.) No.
20 of 1902.

PROCLAMATION No. 20 OF 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 11th April, 1902.)

Preamble.

WHEREAS it is desirable to provide for the expropriation of land for the purpose of burial grounds for certain of His Majesty's Imperial and Colonial Forces and certain of the forces belonging to the late Orange Free State and South African Republic who have died either from wounds or otherwise during the recent campaign in South Africa.

Now, therefore, by virtue of the authority in me vested, I do hereby declare, proclaim, and make known as follows:—

Expropriation of land for burial grounds authorized.

1. It shall be lawful for the Administrator, for the purpose of setting aside, enclosing, and maintaining as a burial ground any land in which officers, non-commissioned officers, or men, whether belonging to His Majesty's Imperial or Colonial Forces or to the forces of the late Orange Free State and South African Republic, who have died from the effects of wounds or otherwise during the recent campaign in South Africa have been buried, to take, use and expropriate so much of such land as may be necessary for the said purpose: Provided that hereafter no such ground shall be used for the burial of any body without the consent of the Administrator.

Acquisition of rights-of-way.

2. For the purpose of access to any land so expropriated, in case there shall exist no public access, it shall be lawful for the Administrator to acquire and establish a right-of-way to any such land from the nearest or most convenient public road, and to that end to use so much land belonging to the different owners of property through which such right-of-way shall pass as shall be necessary.

Compensation.

3. There shall be paid for the expropriation of such land and such rights-of-way such compensation as may be agreed to between the Administrator and the respective owners, and in the absence of any such agreement the amount of such compensation shall be determined by arbitration in manner provided by "The Expropriation of Lands and Arbitration Clause Proclamation, 1902."

Transfer to War Department.

4. Any land or right-of-way acquired under the provisions of this Proclamation may be transferred by the Administrator, free of transfer duty, to His Majesty's Secretary of State for War upon payment to the Administrator of so much of the total cost incurred in the expropriation of the said land and rights-of-way as may be agreed upon between the Administrator and the said Secretary of State. The balance of the said cost shall be paid out of the public revenue.

Enclosing, etc., of land.

5. It shall be lawful for the Administrator, at the request of and upon such conditions as to the cost thereof as he may arrange with the said Secretary of State, to cause any land

expropriated for the purposes of this Proclamation to be enclosed with proper and sufficient walls, rails, or fences with suitable gates and entrances, and to be maintained, preserved, and kept in a cleanly and orderly condition, and to make rules and regulations in that behalf.

6. Any person who shall contravene any regulation duly made by the Administrator under the provisions of the last preceding section of this Proclamation, and any person who shall wantonly or wilfully destroy, or do, or cause to be done, any damage to any monument, vault, tombstone, building, erection, railing, fence, tree, shrub, or plant in or belonging to any land so enclosed as aforesaid, shall, upon conviction before any magistrate having jurisdiction, be liable for every such offence to a penalty not exceeding £20, and in default of payment to imprisonment with or without hard labour for any period not exceeding three months, or to both such penalty and such imprisonment. Penalty clause.

7. All moneys arising from fines and penalties imposed by this Proclamation shall, when recovered, be paid to the Administrator and shall be appropriated to the preservation, maintenance, and improvement of the land set aside as a burial place as provided by this Proclamation. Appropriation of fines.

8. This Proclamation may be cited for all purposes as "The Imperial, Colonial, and Republican Forces Burial Grounds Proclamation, 1902." Short title.

†PROCLAMATION No. 21 OF 1902.

Proclamation
(Trans.) No.
21 of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.
(Dated 10th April, 1902.)
FOR ESTABLISHING COURTS OF RESIDENT MAGISTRATES.

Preamble.

WHEREAS it is expedient to establish courts of resident magistrates and to define the jurisdiction, powers, and duties of the resident magistrates within this Colony:

Now, therefore, by virtue of the authority in me vested, I do hereby proclaim, declare, and make known as follows:—

Districts in
which courts
are
established.

‡1. Courts of resident magistrates shall be and the same are hereby declared to be erected, constituted, and established for and within each of the following districts, that is to say—

- the District of Pretoria at Pretoria;
- the District of Witwatersrand at Johannesburg;
- the District of Potchefstroom at Potchefstroom;
- the District of Heidelberg at Heidelberg;
- the District of Barberton at Barberton;
- the District of Middelburg at Middelburg;
- the District of Standerton at Standerton;
- *the District of Utrecht at Utrecht;
- *the District of Vryheid at Vryheid;
- the District of Wakkerstroom at Volksrust;

to be holden before such persons as shall respectively be appointed to be resident magistrates of such districts: Provided however that no person already appointed a magistrate for any of the above districts shall require to be reappointed to such office.

Establishment of
courts by
notice in
Gazette.

2. It shall be lawful for the Governor by any notice, to be by him from time to time issued for that purpose and published in the *Gazette*, to erect, constitute, and establish courts of resident magistrates to be held for and within such other districts respectively and at such places as the Governor shall think fit, which courts shall respectively be holden before such persons as shall respectively be appointed to be resident magistrates of such districts.

Courts held
at other than
ordinary
places.

3. It shall be lawful for the Governor by notice in the *Gazette* to authorize and appoint the resident magistrate for any district to hold a court at such place or places other than the stated and ordinary place for holding the court of resident magistrate, in such district and at such times as the Governor may in such notice direct. The courts of resident magistrate so held, elsewhere than at the places fixed and appointed as the stated and ordinary places for holding such courts, shall have

Jurisdiction
of.

† See Ord. No. 15 of 1903 (bail); Ord. No. 36 of 1903 (contempt of court); Ord. No. 12 of 1904; Act No. 30 of 1908.

* The Vryheid and Utrecht Districts became part of the Colony of Natal (see Proc. No. 2, Admn., 1903).

‡ For constitution of other courts and districts, see Govt. Notices Nos. 219 of 1902 (Ermelo), 251 of 1902 (Lichtenburg), 280 of 1902 (Marico), 301 of 1902 (Lydenburg), 420 of 1902 (Rustenburg), 176 of 1902 (Wakkerstroom), 277 of 1902 (Waterberg), 238 of 1902 (Wolmaransstad), 248 of 1902 (Zoutpansberg), 643 of 1909 (Boksburg, Germiston, Johannesburg, Krugersdorp); Proc. (Admn.) 56 of 1908 (Bethal, Bloemhof, Carolina, and Piet Retief).

and exercise the same jurisdiction in civil and criminal cases as that possessed by the said courts when held at the stated and ordinary places so fixed and appointed as aforesaid.

4. It shall be lawful for the Governor to appoint the resident magistrate of any district to hold a court at any place in any district other than that in which such resident magistrate shall have been appointed to act, and such court held before such magistrate, and all proceedings had therein, shall be of the same force and effect as if such court had been held by or before the resident magistrate of the district within which such court shall hold its sitting.

Resident magistrate may be appointed to act elsewhere than in his district.

‡5. It shall be lawful for the Governor by any notice to be by him issued for that purpose and published in the *Gazette*, on the taking effect of this Proclamation, and thereafter from time to time as occasion may seem to him to require, to define, fix, and appoint the local limits of the territory which shall be comprehended and included in any of the aforesaid districts, whether in the *first* section mentioned or such as shall hereafter be created, and within which the resident magistrate for such district shall have and exercise jurisdiction and authority: And whenever the Governor shall deem it to be inexpedient or unnecessary that any of the said courts shall continue to be holden for and within any of the districts aforesaid, then and in every such case it shall be lawful for the Governor by any notice to be by him issued for that purpose and published as aforesaid, to abolish such court and the office of resident magistrate for such district or any part thereof, as also to annex any such district or any part thereof to any other district or districts; and every district or part thereof which shall be so annexed as aforesaid to any other district shall thereby become and be within and subject to the jurisdiction and authority of the resident magistrate for the district to which it shall be so annexed: And whenever any court shall be erected under or by virtue of the power and authority in that behalf in the *second* section of this Proclamation mentioned, and the district assigned for the exercise of the jurisdiction of such court shall comprise territory which was before then either wholly or in part within the jurisdiction of some other court or courts of resident magistrate, then and thereupon such territory shall wholly cease to be within or subject to the jurisdiction of such other court or courts.

Fixing limits of magistracy.

Alteration of districts.

6. Whenever the Governor shall, by any notice to be by him issued for that purpose, repeal any such notice by which the court or the office of the resident magistrate for any district was abolished, thereupon and by virtue of such repeal, such court or such office shall of new become and be created, constituted, and established in like manner, and to all intents and purposes as if the same had never been abolished in manner aforesaid.

Revival of abolished magistracies.

‡ As to definition of boundaries and wards of the districts of Barberton, Bethal, Bloemhof, Boksburg, Carolina, Ermelo, Germiston, Heidelberg, Johannesburg, Krugersdorp, Lichtenburg, Lydenburg, Marico, Middelburg, Piet Retief, Potchefstroom, Pretoria, Rustenburg, Standerton, Wakkerstroom, Waterberg, Wolmaransstad, and Zoutpansberg, see Pr. (Admn.) 50, 1909.

Appointment
of magis-
trates.

7. Every person who shall hereafter be appointed the resident magistrate for any district shall be so appointed by the Governor under his Hand and Seal; and it shall be lawful for the Governor, when, and so often as, by reason of the death, sickness, absence from his office on duty or leave, or other incapacity of any resident magistrate, it shall appear to him to be necessary or expedient so to do, to appoint some fit and proper person to act as, and in the stead of, such resident magistrate within his district; and all deeds, acts, matters, and things which shall be done and performed by or before any person so appointed to act as aforesaid, under and by virtue of such, his appointment shall be as legal, valid, and effectual, to all intents and purposes, as if the same had been done and performed by or before the resident magistrate instead of whom such person shall have been so appointed to act.

Acting
magistrates.

Assistant
resident
magistrates.

8. The Governor may from time to time appoint for any district one or more fit and proper persons to be styled assistant resident magistrates, and every assistant resident magistrate shall, subject to the provisions of this Proclamation, have and exercise all the powers and jurisdictions of a resident magistrate in and for the district or within the local limits for which he shall be appointed to act in all cases, civil or criminal, and with regard to marriages solemnized under Law No. 3, 1871, * *and shall have and exercise all the powers, duties, and jurisdiction conferred and imposed upon landdrosts or special landdrosts by Law No. 13 of 1895 and upon resident magistrates by the Administration of Estates Proclamation, 1902.*

Duties of
assistant
resident
magistrate.

The assistant resident magistrate at the seat of magistracy may also in the absence of the resident magistrate exercise all the powers and authorities and discharge all the duties conferred or imposed on the resident magistrate by any other law.

9. Every assistant resident magistrate shall be subordinate to the resident magistrate of the district and shall act as such assistant resident magistrate—

(1) when so required to act at the stated and ordinary place of holding the court of resident magistrate by the Governor or by the resident magistrate, whether the resident magistrate be present or not, and such assistant resident magistrate may act in the disposal of any cases assigned to him for disposal by the Governor or by such resident magistrate while the resident magistrate shall be acting in other cases;

(2) during the absence of the resident magistrate on leave, duty, or from illness or other unavoidable cause;

(3) at such place or within such local limits as may be assigned by the Governor; who may, whenever the place at which any assistant magistrate for any district is appointed to act is so near the boundary of such district that the inhabitants of any adjoining district can with ease and convenience resort thereto, define any portion of such adjoining district as an area over which such assistant magistrate shall have and exercise jurisdiction, and there-

* Words in italics added by Ord. No. 12 of 1904, sec. 1.

upon all persons within the area so defined shall for all proceedings, civil and criminal, be subject to the jurisdiction of such assistant magistrate as aforesaid as well as to the court of resident magistrate of the district of which such area is a portion.

10. Every person who shall in manner aforesaid be appointed to be † a resident magistrate, assistant resident magistrate, or to act as or in the stead of any resident magistrate, shall, before exercising any of the functions of his office, take the oath of allegiance and oath of office set forth in the schedule hereunto annexed marked "A" before any justice of the peace who is hereby empowered and required to administer the same: and every such person shall, as soon as he shall have duly taken the oaths aforesaid, cause such oaths to be recorded and shall subscribe the same in the record book of the proceedings of his court or the court in which he shall so have been appointed to act as the case may be.

Oath to be taken by magistrates.

*11. The courts of resident magistrates aforesaid shall be respectively courts of record, and the pleadings and proceedings of the said courts shall be carried on and the sentences, decrees, judgments and orders thereof pronounced and declared in open court and not otherwise; and the several proceedings and pleadings of the said courts shall be in the † [English language: And in all criminal cases the witnesses against and for any accused person or persons shall deliver their evidence *viva voce* and in open court; provided that if any of the bystanders disturb the order or peace of the court the resident magistrate may order the court-room to be cleared and the doors thereof closed to the public; and provided further, that the court may in any special case in the interests of good order and public morals direct that the trial is to be held with closed doors and that the public or females or those of the public who are under the age of sixteen years are not to be admitted.

Courts of record.

Judgments in open court.

Proceedings to be in English.

Bystanders.

Closed doors.

† 12. Every resident magistrate shall have in all civil cases the jurisdiction following, that is to say:—

Jurisdiction in civil cases.

(a) With regard to persons in respect of matters falling within the terms of sub-section (b) of this section—

- (1) in actions instituted against any person residing or carrying on business within the district for which such resident magistrate shall have been appointed;
- (2) in actions instituted against any person resident elsewhere, but in such case with reference only to landed property situate within such district.

(b) With regard to things—

- (1) in all cases founded upon any bill of exchange, promissory note, good-for, bond, or other written acknowledgment of debt commonly called a "liquid document" to an amount of five hundred pounds and

† As in *Gazette*.

* See Act No. 30 of 1908, secs. 4 and 5.

† See, however, the South Africa Act, 1909, sec. 137.

† See Act No. 27 of 1907, sec. 13.

- any interest due thereon, †*and in all cases commonly called " illiquid " for the recovery of the price of any merchandize, goods, or other movable property when the amount claimed does not exceed the sum of two hundred and fifty pounds sterling;*
- (2) in all other cases where the claim or the value of the matter in dispute does not exceed the sum of one hundred pounds;
 - (3) in actions of ejection against the occupier of any lands, tenements, or premises situate within the local limits of his district: Provided that where the right of ownership is in dispute between the parties the value of the property shall not exceed one hundred pounds; and provided that where the right to the occupation of any such lands, tenements, or premises is in dispute between the parties such right shall not exceed one hundred pounds in clear value to the occupier.

Provided that as often as any action or suit shall be brought upon any liquid document §*or in respect of the price of any merchandize, goods, or other movable property* for any sum exceeding one hundred pounds as aforesaid the resident magistrate shall have jurisdiction to try any plea of set-off or compensation not exceeding the amount demanded by the plaintiff in the summons.

Arrest and
interdicts.

||13. *It shall be lawful for a court of resident magistrate (1) to grant orders for arrests and interdicts against persons and things when the debt or matter in dispute is within the jurisdiction of the court of resident magistrate; (2) in any final judgment in a civil case to order the delivery to the plaintiff or to any third party who has intervened of any movable property claimed in lieu of or in addition to damages claimed; provided that the value of such movable property and the amount of such damages shall not when added together exceed an amount beyond the jurisdiction of a court of resident magistrate.*

Execution of
judgments.

14. Whenever any court of resident magistrate shall give judgment for the payment of money the amount shall be recoverable in case of default or failure of payment thereof forthwith or at the time or times and in the manner ordered by the said court by execution against the movable property, and if there be no movable property or not sufficient to satisfy the judgment then against the immovable property of the party against whom such judgment shall be given which execution shall be sued out and executed in manner and form as in that behalf directed by the rules and regulations of the courts of resident magistrates: Provided always, that where it is required that immovable property be sold in execution in satisfaction of the judgment of any court of resident magistrate such property shall be sold only through the sheriff after

† Words in italics were added by Ord. No. 12 of 1904, sec. 2.

§ Words in italics were inserted by Ord. No. 12 of 1904, sec. 2 (2).

|| This section substituted by Ord. No. 12 of 1904, sec. 3.

process in aid shall to that end have been applied for on an *ex parte* application to and granted by the High Court of the Transvaal: And provided further, that no writ of execution shall be issued after the lapse of twelve months calculated from the day on which judgment is pronounced unless the said judgment shall first have been revived, but writs of execution once issued shall remain of force until such time as the judgment shall have been satisfied.

No writ after twelve months.

15. Whenever there shall not be found within the district of the resident magistrate from out of whose court such execution shall issue against any person sufficient property of such person from which the debt or costs can be levied by virtue of any writ issued by such magistrate, or whenever it shall be found necessary by reason of the defendant's removal from the district of the resident magistrate out of whose court a warrant for civil imprisonment shall have issued under the provisions of section *eighteen*, to have such warrant executed elsewhere, such writ or warrant, when endorsed by the resident magistrate of any other district (and every resident magistrate is hereby authorized and required, on production to him of any such writ or warrant, to endorse the same), shall have the like force and effect, and may be executed by the officer or person to whom such writ or warrant shall be directed within the district of the magistrate by whom it has been endorsed as if it had been issued by such last-mentioned magistrate for execution of any sentence or judgment of his court.

Execution in other districts.

16. In respect of any process of execution issued against any person out of any court of resident magistrate the following property shall be protected from seizure and shall not be attached or sold, to wit:—

What property may not be attached.

(a) The necessary bed or beds and bedding or wearing apparel of the person against whom the execution is levied and of* his family.

(b) The supply of food and drink in the house sufficient for the needs of the family during one month.

(c) Tools and implements of trade or the tools necessarily used in the cultivation of land in so far as the same do not exceed the value of twenty-five pounds.

(d) Professional books, documents, or instruments in so far as the same do not exceed the value of twenty-five pounds.

17. Whenever it shall appear from or by the return of the messenger of any court of resident magistrate to any process of execution, whereby such messenger was required to cause to be levied and raised of the movable property of any defendant the amount of any debt and costs recovered by the judgment of the said court by any plaintiff, that such messenger had not found any such movable property or had found sufficient of the same wherewith to satisfy only some part or portion of such debt or costs as aforesaid, then and in that case it shall and may be lawful for the clerk of the court and he is hereby required upon the application of the said plaintiff or his lawful agent to

Decree of civil imprisonment.

* As in *Gazette*.

issue and deliver to the messenger of the said court a summons for the said defendant calling upon him to appear and show cause why a decree of civil imprisonment should not be pronounced against him, which summons shall in substance and effect be in the form in that behalf in Schedule B to this Proclamation contained.

Warrant of imprisonment.

18. When and as often as any such court as aforesaid shall make a decree of civil imprisonment against any defendant the process for the execution of the same shall be by warrant which shall in substance and effect be in the form in that behalf in Schedule B to this Proclamation contained.

Imprisonment and maintenance during.

19. The keeper of whatever prison who† shall in any such warrant be mentioned and referred to shall receive into his custody and retain therein according to the tenor of such warrant the person against whom the same shall have been sued out: Provided always that the plaintiff suing out the same shall pay and satisfy the charges for the maintenance of the defendant precisely as if such defendant had been committed under or by virtue of a decree of civil imprisonment made and granted by the High Court of the Transvaal: And provided also, that it shall be lawful for such keeper as aforesaid in case any such charges shall remain unsatisfied to discharge the debtor from custody forthwith: And provided further, that such charges as aforesaid for maintenance shall be such an amount not exceeding two shillings and sixpence per diem as the magistrate shall determine and shall be paid weekly in advance by the keeper of the prison into the hands of the imprisoned debtor.

Circumstances under which decree of imprisonment may be withheld.

20. When and as often as any defendant summoned as aforesaid to show why a decree of civil imprisonment shall not be made against him shall propose terms of settlement to the plaintiff which the said plaintiff shall agree to accept or shall propose terms of settlement which, although the said plaintiff shall refuse to accept the same, shall yet be deemed by the said court to be fair and reasonable, it shall and may be lawful for the said court either to withhold the said decree or to grant the same with such certain stay of execution or other equitable condition as shall best tend to carry into effect or secure the performance of the terms of settlement agreed upon between the parties when there are such terms or when there are none such then as shall best tend to carry into effect and secure the performance of any terms proposed by the defendant which by the said court shall be deemed fair and reasonable and as such be approved and adopted or otherwise as shall best tend to meet the merits of the case: Provided always, that no writ of civil imprisonment for non-payment or non-satisfaction of any judgment or decree shall be granted or issued in cases in which the party against whom such writ of civil imprisonment is sought to be issued shall prove to the satisfaction of the court that he has not property or means sufficient to satisfy in whole or in part the said judgment or decree.

Proof that defendant has property must be given before civil imprisonment decreed.

† Not in *Gazette*.

21. No defendant shall be detained in prison under any such warrant as aforesaid in any case in which the debt and costs mentioned in such warrant shall together amount to less than five pounds for any period longer than one month; nor in any case whatever for any period longer than six months; and no defendant once discharged shall ever be again arrested for the same debt or cause of action: Provided always, that when any defendant shall be discharged from prison by reason merely that any such period as aforesaid has expired or by reason of any charges for maintenance remaining unsatisfied such imprisonment and discharge shall not be deemed to be a satisfaction of the debt, damages, or costs for which he was taken in execution so as to prevent the plaintiff from having further execution against the property of such defendant: And provided also, that every defendant imprisoned under any such warrant shall be discharged forthwith upon payment of the amount of debt and costs mentioned in the said warrant.

Period of imprisonment and effect of liberation.

22. All and singular the costs and charges incurred in any proceedings for civil imprisonment shall be payable and paid by the plaintiff who shall not (except as hereinafter *excepted) recover or have the same or any of them from the defendant: Provided always, that if in any case in which any such decree of civil imprisonment shall be made or granted it shall be made to appear to the court at the time of granting the same that the non-payment by the said defendant of the debt and costs due by him and then in question is vexatious it shall be lawful for such court to allow against such defendant the costs and charges aforesaid or any part thereof which to the court may seem fit; and provided also, that nothing in this section contained shall be construed so as to affect any settlements by means of terms offered by the defendant and accepted by the plaintiff or to prevent the court from taking such costs and charges into its consideration in any case in which terms are proposed by the defendant as fair and reasonable for the purpose of being sanctioned by the said court and carried into effect by its authority.

Costs of proceedings for imprisonment by whom payable.

23. Whenever a judgment of any court of resident magistrate shall have been obtained for the amount of any rent of any house, land or premises and it shall appear by the messenger's return that no movable property has been found wherewith to satisfy the judgment it shall be lawful for the plaintiff to serve upon the defendant a notice in writing informing him that application will be made to such court for an order condemning him to deliver up possession of the house, land or premises in respect of which the said rent shall be due; provided that no claim or demand for the delivery up of possession as aforesaid shall be entertained in any case in which the lease or contract of hire or the term thereof yet to come and unexpired shall be of a value which is above the jurisdiction of any court of resident magistrate under the *twelfth* section of this Proclamation.

Proceedings for recovery of possession of a house, etc., upon return of *nulla bona* in action for rent.

* As in *Gazette*; given in Pr. 1900-1902 as "accepted".

Decree for delivery up of possession and its effects.

24. It shall be lawful for the court of resident magistrate, upon proof of such return, as aforesaid, and of the due service of such notice, as aforesaid, and after hearing the plaintiff, and also the defendant if he appear, to condemn the defendant forthwith to deliver up possession of the house, land, or premises in question, and thereupon the clerk of the court shall, upon the application of the plaintiff, issue a warrant authorizing and requiring the messenger of the said court to put the plaintiff into possession of the said house, land, or premises; which warrant shall in substance and effect be in the form in that behalf in the rules and regulations of the courts of resident magistrates contained, and which warrant it shall and may be lawful for such messenger to execute as against the defendant and all persons claiming from, through, or under him, and thereupon every previous contract or agreement for the hire or use of such house, land, or premises by the said defendant from the said plaintiff shall become, and be wholly avoided, and from thenceforth absolutely determined; provided always that the execution of such warrant shall not operate as a satisfaction or extinguishment of the rent recovered by such judgment.

Court in a certain case may in an action for rent decree delivery up of possession.

25. If it shall be made to appear to any such court, as aforesaid, at the time of the hearing of any action brought for the recovery of any such rent, as aforesaid, either by the admission of the defendant or otherwise, and whether such defendant shall personally appear at any such hearing or not, that there is no property to be found against which to execute any process of execution, the said court may then and without the issue of any such process or any fresh summons condemn the defendant to deliver up possession, as aforesaid, in like manner as if he had been duly served with a notice in manner and form as in the *twenty-third* section of this Proclamation mentioned.

Appeal against judgment of magistrate.

26. It shall be lawful for any person being a party to any civil suit or action depending in any court of resident magistrate to appeal against any final judgment, decree or sentence of such court, or against any rule or order made by such court in any such civil suit or action having the effect of a final or definitive sentence to the High Court of the Transvaal; and in every such case in which any such appeal shall be made the resident magistrates shall, and are hereby respectively empowered, either to direct that the judgment, decree, rule, order, or sentence appealed from, shall be carried into execution, or that the execution thereof shall be suspended, pending such appeal as to the said resident magistrates respectively may in each case appear to be most consistent with real and substantial justice; and in case any resident magistrate shall direct any such judgment, decree, rule, order, or sentence, to be carried into execution, the person in whose favour the same shall have been given shall, before the execution thereof, enter into good and sufficient security, to be approved by such resident magistrate, for the due performance of such judgment or order, as the said High

When appeal made judgment may be either executed or suspended.

Court shall think fit to make thereupon; and in case any resident magistrate shall direct the execution of any such judgment, decree, rule, order, or sentence, to be suspended, pending such appeal, such resident magistrate shall, and may whenever it shall appear to him necessary and consistent, with real and substantial justice so to do, require the person against whom such judgment, decree, rule, order, or sentence, shall have been given, before any order for the suspension of any such execution is made, to enter into good and sufficient security to be approved by such resident magistrate for the due performance of such judgment or order as the said High Court shall think fit to make thereupon; provided always that every such appeal shall be taken, entered, and made within such time and in such manner as is directed and required by the rules and regulations for the time being of the courts of resident magistrates; and the said High Court may reverse or alter the judgment of the said court of resident magistrate as justice shall require, and in case the record of the resident magistrate shall not furnish sufficient evidence or information for the due determination of the case may remit the said record to the court of the resident magistrate with instructions in regard to the taking or setting out of further evidence or information; or such High Court may order the parties, or either of them, to produce at some convenient time in such court, such further proof as shall seem necessary or desirable; or such High Court may take such other course as may lead to the just, speedy, and as much as may be inexpensive settlement of the case, making such order in regard to costs as justice shall require.

At what time appeal to be taken.

Procedure on appeal.

27. If any action shall be commenced in the High Court of the Transvaal or Witwatersrand District Court for or upon any cause of action other than some one of those in the next succeeding section mentioned, for which cause an action might have been commenced in some court of resident magistrate, and judgment shall be given for the plaintiff for a sum less than five hundred pounds, exclusive of interest, if such action be founded upon a liquid document, as in the *twelfth* section of this Proclamation mentioned, or less than one hundred pounds if such action be not founded upon a liquid document, such plaintiff shall not recover any costs exceeding the estimated amount of the costs which he would in the same case have recovered in the court of resident magistrate had he brought his action therein, and if judgment shall be given in favour of the defendant he shall be entitled to his costs as between attorney and client unless in either case the court trying the action shall find and record that the said action from its nature or circumstances was fit to be brought into such court.

Costs where action competent before magistrate is brought in superior court.

Costs.

28. In all cases in which the plaintiff resides in a district other than that in which the defendant resides and no part of the cause of action arose in such last-mentioned district and in all cases where a claim or demand is founded upon any notarial or other mortgage bond or bill of exchange or promissory note

Cases in which action may be brought in High Court of the Transvaal.

or other liquid document of which the lawful holder for valuable consideration does not reside in the same district with the defendant, and in all cases in which any action shall be brought against any officer of any such court for or on account of anything relating to his conduct in his office the plaintiff may bring his action in the High Court of the Transvaal, although some court of resident magistrate might have had jurisdiction, and in that event the question of the costs in such action shall be judged of by the said High Court in like manner as if it could not have been brought in any other court.

Enrolment of practitioners.

29. It shall be lawful for every court of resident magistrate to admit and enrol as agents in the said court so many persons of full age and of good fame and character as shall be desirous to be so enrolled and who have either been duly admitted to practice as law agents in the courts of landdrost of the late South African Republic or who have passed the examinations which under the laws thereof would have entitled them to be so admitted.

Jurisdiction of court over enrolled practitioners.

30. Every such court shall possess and exercise over or in respect of all agents so enrolled the like powers and authorities as the High Court of the Transvaal possesses and exercises over or in respect of the attorneys thereof, and may summarily enquire into any charge of misconduct preferred against any agent, and should the same prove to be well-founded may remove such agent from the roll of agents either absolutely or conditionally or may suspend such agent from practice in the said court for a limited period in all cases in which under similar circumstances arising in or out of proceedings in the said High Court any attorney thereof might lawfully have been by the said court proceeded against and punished in the same manner; provided always that every resident magistrate shall record the evidence upon which he shall have ordered any such removal or suspension and that any agent who shall conceive himself to be aggrieved by any such removal or suspension may bring the same in review before the High Court of the Transvaal which court may confirm or set aside the same; and when and as often as any such removal or suspension shall be set aside no costs shall be awarded against the magistrate ordering the same in case he shall appear to have acted bona fide and upon reasonable and probable cause; provided always that even if such removal or suspension shall not be brought in review the magistrate so removing or suspending any agent shall nevertheless transmit to the Registrar of the High Court of the Transvaal a certified record of the evidence upon which the said removal or suspension was grounded, and it shall be lawful for the said court in case it should deem such removal or suspension one fit to be rescinded or reconsidered to make such order in the matter as shall to justice appertain; and provided, further, that it shall at all times be competent for the Council of the Incorporated Law Society of this Colony to bring to the notice of the High Court of the Transvaal any facts regarding the

conduct of any law agent whether the same shall or shall not already have been adjudicated upon by a resident magistrate which in the opinion of the said Council ought to be brought to the notice of the High Court of the Transvaal, and such court may thereupon remove such agent from the roll of law agents or may suspend such agent from practice for a limited period or may make such order in the matter as shall to justice appertain.

31. The costs and charges in connection with any proceedings under this Proclamation shall be payable and paid according to the scale provided by Law No. 12, 1899, for the courts of landdrost of the late South African Republic until such scale is altered by any rules made by the members of the High Court of the Transvaal under section *fifty-one* of this Proclamation.

Fees recoverable by enrolled practitioners from client.

32. The party, whether plaintiff or defendant, in whose favour any judgment of any court of resident magistrate in any civil action or proceeding shall be pronounced shall, subject to the conditions hereinafter mentioned, be allowed in the taxation of costs against the opposite party the expense of the agent, if any, employed by the party successful according to the scale aforesaid; provided always that nothing herein contained shall be construed so as to deprive any such court of discretionary power to refuse costs to any suitor to whom it would in the judgment of such court be inequitable to allow the same.

Fees recoverable from opposite party in regard to employment of an enrolled agent.

33. Any advocate of the High Court of the Transvaal may appear and plead in any civil action or proceeding depending in any court of resident magistrate; *provided that the fees and any costs occasioned by the employment of any such advocate shall only be charged in the taxation of costs between party and party in such cases as the magistrate may certify in writing to be of sufficient importance to warrant it, and upon such scale as may from time to time be prescribed by rules made under section fifty-one of this Proclamation.**

Advocates may appear.

Costs.

34. Every attorney duly admitted to practise in the High Court of the Transvaal shall be entitled to practise in any court of resident magistrate without payment or enrolment but shall be considered in the taxation of costs and in other respects as an enrolled agent.

Attorneys to be deemed enrolled Agents.

35. Every resident magistrate shall have jurisdiction in all cases of crimes and offences wherein any person may be accused of any crime or offence not punishable by death, transportation or banishment from this Colony; provided always that it shall not be lawful for any such resident magistrate to punish any offender in any higher or more severe manner than by fine not exceeding the amount of seventy-five pounds sterling or by imprisonment with or without hard labour, and with or without spare diet and with or without solitary confinement or either of them for a period not exceeding six months or by a whipping privately in prison not

Jurisdiction in criminal cases.

Punishments.

* Words in italics were substituted by Act No. 30 of 1908, sec. 7.

|| See Ord. No. 26 of 1904, sec. 38 (punishment of whipping); Ord. No. 20 of 1905, sec. 7.

exceeding twenty-five lashes; provided that any offender may be punished by both such fine and such imprisonment or by both such imprisonment and such whipping or by both such fine and such whipping; and provided also that in regard to the infliction of spare diet or solitary confinement* the resident magistrates shall observe and conform to such regulations and restrictions as shall from time to time be deemed necessary to prevent injurious consequences and be by the Governor issued for their guidance; and provided further, that nothing herein contained shall be construed so as to prevent any resident magistrate from inflicting any other or greater punishment than the punishment aforesaid when and as often as he is or shall be authorised so to do by any special law now in force or hereafter to be enacted; and provided further that nothing in this section shall make it lawful for any court of resident magistrate in any case to sentence or adjudge any female to receive personal correction or to hard labour on any road, street, or public place.

Females not to be liable to corporal punishment or to labour in a public place.

The punishment of whipping (except when expressly authorised upon a first conviction by some law) shall only be inflicted in the case of a second or subsequent conviction for some crime or offence within the space of three years.

Juvenile offenders.

¶36. As often as *any male child*† not exceeding the age of fourteen years shall be convicted by or before any court of resident magistrate of any crime or offence, then it shall be in the discretion of the said court as well as in the case of a first conviction as of any subsequent conviction to sentence such offender to receive in private a moderate correction with a cane or rod not exceeding fifteen cuts, which correction shall be administered by such person and in such place as the said magistrate shall appoint; provided that in case the father or reputed father of any such offender shall in person express a desire to correct such offender himself in the manner adjudged by the court it shall be lawful for the resident magistrate to permit him to do so in the presence of any suitable person to be selected by such magistrate to witness the administration of such correction; and provided further that should the age of any such offender be unknown, then it shall be lawful for the court of resident magistrate before which he shall be tried to judge of the age of such offender by his appearance, or according to such other materials for forming a judgment upon the subject as shall exist; and no error which shall be bona fide made by any magistrate in judging the age of any such offender shall vitiate or affect the sentence by which such offender shall be sentenced to receive and shall have received any such correction as aforesaid.

Local limits of jurisdiction.

37. (1) No resident magistrate shall have jurisdiction to try any case of any crime or offence committed without the local limits of the district within which such magistrate shall have been appointed to exercise jurisdiction save and except

* See Govt. Notice No. 207 of 1909 (spare diet and solitary confinement regulations).

¶ As amended by Ord. No. 47 of 1902, sec. 1 (b).

† Words in italics substituted by Ord. No. 47 of 1902, sec. 1 (a).

(a) where any crime or offence shall be committed on the boundary or boundaries of two or more districts or within the distance of two miles of any such boundary or boundaries or shall be begun in one district and completed in another every such crime or offence may be dealt with, inquired of, tried, determined, and punished in any of the said districts in the same manner as if it had been actually and wholly committed therein;

(b) where any crime or offence shall be committed on any person or on or in respect of any property in or upon any coach, wagon, cart or other carriage whatever employed in any journey or on board any vessel whatever employed on any voyage or journey upon any river within or forming the boundary of any part of this Colony, such crime or offence may be dealt with, inquired of, tried, determined, and punished in any district through any part whereof, or on or within the distance of two miles of the boundary whereof such coach, wagon, cart or carriage or vessel shall have passed in the course of the journey or voyage during which such crime or offence shall have been committed, in the same manner as if it had been actually and wholly committed in such district;

(c) where any crime or offence shall be committed on any person, or in respect of any property upon any line of railway, such crime or offence may be dealt with, enquired of, tried, determined, and punished by the resident magistrate of any district in, or through any part whereof such line of railway passes, in the same manner as if such crime or offence had been actually or wholly committed in the district of such magistrate.

(2) A person charged with committing any offence may be tried by any resident magistrate within whose jurisdiction any act or omission or event, which is an element of the offence, takes place.

(3) A person charged with theft may also be tried by any resident magistrate within whose jurisdiction he has any part of the stolen property in his possession.

(4) A person charged with an offence which involves the receiving of any property by him may also be tried by any resident magistrate within whose jurisdiction he has any part of the property in his possession.

(5) A person charged with counselling or procuring the commission of an offence, or with becoming an accessory after the fact to an offence, may also be tried by any resident magistrate by whom the principal offender might be tried.

(6) If, on the trial of a person charged with any offence before any court of resident magistrate, it appears that he is not properly triable before that court, he shall not by reason thereof be entitled to be acquitted; but the court shall discharge such person and direct that he be tried before some

Offences committed within two miles of the boundaries of two or more districts may be tried in any of such districts.

Offences committed in or upon carriages employed in a journey or on board of a vessel on any river in or forming a boundary of the Colony, may be tried in any district within two miles of the boundary of which such carriage or vessel may have passed.

Jurisdiction of magistrates in cases of crimes committed on lines of railway.

proper court of resident magistrate, and shall remand him for trial accordingly; provided, however, that the court may, upon the special request of such person to that effect, proceed with the trial, and the judgment of the court shall, in such case, have the same effect in all respects as if the court had originally had jurisdiction to try the accused person.

*Where any court of resident magistrate has remanded a prisoner for trial before any other court of resident magistrate, such prisoner shall, unless liberated on bail, forthwith be transmitted to the gaol of the district for trial before such court.

Where it is uncertain in which of several jurisdictions an offence has been committed, it may be tried in any of such jurisdictions.

Accused
entitled to
professional
assistance.

38. Every person upon trial on any criminal charge in any court of resident magistrate shall be entitled to make his defence by counsel, or by attorney, or by an enrolled agent.

Review by
High Court.

39.‡ When, and as often as any court of resident magistrate shall sentence any person upon conviction to be imprisoned with or without hard labour for any period exceeding *six weeks*,§ or to pay a fine exceeding twenty-five pounds, or to receive any number of lashes,|| the magistrate pronouncing such sentence shall forward to the Registrar of the High Court of the Transvaal, not later than one week next after the determination of the case, the record of the proceedings in the case, together with such remarks (if any) as he may desire to append; and such registrar shall, with all convenient speed, lay the same before one of the members of the court in chambers for his consideration, and in case the said proceedings shall appear to such member to be in accordance with real and substantial justice, he shall endorse his certificate to that effect upon the said proceedings, and the said proceedings shall then by the registrar aforesaid be returned to the resident magistrate by whom the same shall have been transmitted; provided always† that the execution of any sentence of imprisonment, with or without hard labour, shall not be suspended by the transmission of or the obligation to transmit the record aforesaid, unless the person sentenced shall give sufficient bail to surrender himself in order to undergo such imprisonment in case the proceedings in the case shall be approved as aforesaid, and in case a written notice to surrender signed by the clerk of the court of the convicting magistrate shall be served upon, or for the said person at some place to be mentioned in the bail-bond or recognisance; and every such notice requiring the surrender of the person shall be

* For power of magistrates to admit to bail during summary trials, see Ord. No. 15 of 1903.

‡ See Act No. 18 of 1907, sec. 2.

§ Words in italics were substituted by Ord. No. 12 of 1904, sec. 4.

|| The provisions of this section are *mutatis mutandis* to apply to the review by a judge of sentences of lashes imposed by a native commissioner or sub-commissioner. (See Ord. No. 3 of 1902, sec. 4.)

† For power of magistrates to admit to bail during summary trials, see Ord. No. 15 of 1903.

served in manner and form as are prescribed and directed by the rules and regulations of the courts of resident magistrates in regard to the service of the summons on a defendant in a civil case. And if in any case a person sentenced to receive any number of lashes shall not be also condemned to be imprisoned for such a period as shall allow time for the certificate of a member of the High Court to be received before inflicting the said lashes, such person, in case he shall not give sufficient bail for his appearance, after being served at some place to be mentioned in the bail-bond or recognisance with a written notice signed by such clerk as aforesaid, requiring him so to do, shall be detained in custody until the proceedings in the case shall be returned as aforesaid; provided always, that in every case in which any person sentenced as aforesaid shall give bail as aforesaid, it shall be lawful for the magistrate (should he think fit) to take bail also for the cost and charge of serving such notice as aforesaid (if necessary), which cost and charge shall be the same as that of serving a summons in a civil case against the same person at the same place.

40. If, upon considering the proceedings aforesaid, it shall appear to such member of the High Court in chambers that the same are not in accordance with real and substantial justice, or that doubts exist whether or not they are in such accordance, then it shall be lawful for such member to lay the same before the said High Court for its consideration, and the said court at any sitting thereof shall have full power, jurisdiction, and authority to affirm, alter, or reverse the sentence of the resident magistrate's court, and to set aside or correct the proceedings thereof, and when it shall appear necessary or proper so to do, to remit such case to the said resident magistrate's court with such instructions relative to the further proceedings to be had in such case as the said High Court shall think fit, and to make such order touching the suspension of the execution of any sentence against the person convicted or the admitting such person to bail, or generally any matter or thing connected with such person, or the proceedings in regard to him, as the said court shall deem calculated to promote the ends of real and substantial justice; provided also, that if in any case the said court should desire to have any question of law or fact arising in such case argued at the bar, such court may direct the same to be argued by the Legal Adviser to the Transvaal Administration or his lawful deputy, and by any such other advocate as the said court may appoint.

Powers of High Court in review.

41. Every resident magistrate forwarding any such record as in the *thirty-ninth* section of this Proclamation mentioned, shall inform the person convicted of the day upon which such record will be forwarded, and it shall be lawful for any attorney of the High Court duly acting for such convicted person to peruse, and if need be take a copy of such record whilst in the possession of the registrar of the said court or of any of the members thereof; and it shall be lawful for such

Person convicted may cause the case as transmitted to be set down for argument.

attorney, should he so think fit, acting as aforesaid, to set down the case contained in such record for argument before the said court in like manner as if such record had been returned or transmitted to such court in obedience to any summons of such court, issued in and for an appeal from, or review of a judgment of the court of resident magistrate; provided always that a written notice shall, in every such case whether prosecuted at the public instance or at the instance of a private party, be served upon the Legal Adviser to the Transvaal Administration at his office in Pretoria, not less than forty-eight hours before the hour appointed for the argument, setting forth that such case has been so set down for argument, as well as the grounds or reasons upon which the judgment is sought to be reversed or altered; and provided that whether the said judgment shall be confirmed, or shall be reversed or altered, no costs shall be payable by the prosecutor to the person convicted or by the person convicted to the prosecutor; provided also that no sentence contained in any record of proceedings forwarded as in the *thirty-ninth* section of this Proclamation directed, which sentence shall have been pronounced in regard to what was by law an offence sufficiently charged and proved, and lawfully punishable as by the said sentence directed, shall be reversed or altered by reason merely, that the degree of punishment awarded by such sentence, may appear to the court or member thereof, considering such record to have been unusually or unnecessarily severe. And provided, lastly, that nothing herein contained shall extend to prevent such court or member or any other person from making such representation to the Governor respecting the mitigation of any such sentence as the circumstances of the case may appear to justify.

Right of
appeal.

42.* It shall be lawful for any person who shall be convicted by the judgment of any court of resident magistrate to appeal against such conviction, and any sentence following thereupon to the High Court of the Transvaal; provided always that any such appeal shall be taken, entered, and prosecuted within such time and in such manner as is directed and required by the rules and regulations for the time being of the courts of resident magistrates, and the said High Court may thereupon confirm, set aside or reduce any such conviction or sentence as justice shall require, and when any such appeal is made as aforesaid, the provisions of the *thirty-ninth* section of this Proclamation in regard to the execution of any sentence and the circumstances under which any such sentence may be suspended shall apply *mutatis mutandis* to any sentence so appealed against.

Legal Adviser
may bring
decision on a
point of law
in review.

43. It shall be lawful for the Legal Adviser to the Transvaal Administration, if in any case he is dissatisfied with the finding of any court of resident magistrate upon a point of law in any criminal case, to bring the same in review before the High Court of the Transvaal in order to take the opinion

* See, however, Act No. 18 of 1907, sec. 1.

of the said High Court on the point involved for the future guidance of courts of resident magistrates; provided always that the ruling of the said High Court in such review shall in no way affect the finality of the finding of the court of resident magistrate in the particular case so brought in review.

44. In actions and proceedings whether civil or criminal before any court of resident magistrate, it shall be lawful for such court before or at the hearing to amend any plaint or summons or other record in regard to the misdescription therein of any written instrument or paper, writing relating to such action or proceeding, or of any contract or any other particular or particulars; provided that no such amendment be made except in some particular, which in the judgment of such court is not material to the merits of the case, and by which the opposite party cannot be prejudiced in the conduct of his action, prosecution, or defence; provided also that in civil proceedings such amendment shall be made upon the payment of such costs to the other party if any, as such court shall judge reasonable; and provided further that no misnomer in regard to the name of any person or any place shall vitiate any summons or other writ or plaint or proceeding in case the person or place be therein described so as to be commonly known.

Amendment
of plaint or
summons.

Costs.

45. Whenever any person whom it shall be necessary to examine as a witness in the course of any preparatory examination or at a trial of any cause whether civil or criminal before any of the resident magistrates as aforesaid shall reside or be for the time within any other district than that of such magistrate, then, and in every such case, it shall be lawful for the said magistrate to issue a summons for the attendance of such person before him in the like form as is by law provided in respect of summonses to be issued in like cases for procuring or compelling the attendance of witnesses residing or being within the district of the resident magistrate issuing the same; and every such summons when endorsed by the resident magistrate or any justice of the peace for such other district within which the person so to be summoned resides for the time or shall be found (who are hereby respectively authorised and required on production to them of any such summons to endorse the same), and being duly served and returned by any person authorised to serve such a summons in either of the said districts shall have in law the like effect in requiring the attendance of such person as aforesaid before the magistrate by whom the same was issued, and in rendering such person if he shall fail so to attend liable to every penalty provided for the non-attendance of persons summoned as witnesses, as if such person at the time when such summons was served had resided or been within the district of such last-mentioned magistrate; provided that as often as any witness in any civil case brought in any court of resident magistrate shall reside or be in a district other than that under the jurisdiction of such court, it shall be lawful for the court in which such civil action shall be brought, should it appear

Summoning
of witnesses
resident in
another
district.

Examination
of witnesses
resident in
other districts
by interroga-
tion.

to be for the convenience of the witness and to be consistent with the ends of justice upon the request of either party and after hearing the other party, to frame or approve of such interrogatories as either party shall desire to have put to such witnesses and to forward the same (together with the reasonable expenses of such witness which shall be advanced by the party desiring his examination) to the resident magistrate of the district within which such witness shall reside or be, who shall summon such witness to appear in his court, and upon his appearance shall take his evidence in manner and form as if a witness in a case pending in such last-mentioned court and shall put to such witness the interrogatories aforesaid, and all other questions calculated to obtain full and true answers to such interrogatories, and shall take down or cause to be taken down in writing the evidence of such witness, and shall transmit the same certified as correct to the resident magistrate in whose court such civil case shall be pending; and such evidence (subject to all lawful objections) shall be received as evidence in such case; provided also that every witness so summoned by any resident magistrate to appear to answer any such interrogatories as aforesaid shall be summoned in like manner, and be liable to the like penalties in case of non-attendance as if such summons was a summons to give evidence in the court of such last-mentioned resident magistrate; and provided lastly that as often as any such witness as in this section mentioned in any case, civil or criminal, shall, after being summoned to appear in the court of some resident magistrate, other than that of the district in which such witness shall reside or be* fail to appear, it shall be lawful for the resident magistrate in whose court he shall have been summoned to appear to certify under his hand to the resident magistrate of the district in which such witness shall reside, or be, that such witness after being summoned to appear, to give evidence in the case in question made default in so doing, and thereupon it shall be lawful for such last-mentioned resident magistrate, and he is hereby required to proceed against such witness in regard to such default in like manner precisely as if such witness had been summoned to appear as a witness in the court of such last-mentioned resident magistrate, and had made default, and such last-mentioned resident magistrate shall certify to the resident magistrate in whose court the actual default was made what shall have been done in regard to the witness so having made default.

Procedure in cases of examination upon interrogatories.

Penalty for failure to appear.

Commission *de bene esse*.

46. It shall be lawful for any court of resident magistrate in any civil case where it may be necessary or expedient and consistent with the ends of justice so to do, to appoint a fit and proper person to be a Commissioner, to take the evidence of any witness upon application of any one of the parties of which application, due notice shall have been given to the other party, and the evidence so taken (subject to all lawful exceptions) shall be received as evidence in such case.

* As in *Gazette*.

47. If any claim shall be made† to or in respect of any movable property taken in execution under the process whether civil or criminal of any court of resident magistrate, or to or in respect of the proceeds or value thereof by any person not being the party against whom such process was issued, it shall be lawful for the clerk of the court issuing such process upon the application of the messenger, as well before as after any action brought against him, to issue a summons calling before the court as well, the party suing out such process as the party making such claim, which summons shall be in the form in that behalf in the rules and regulations of the courts of resident magistrates contained; and thereupon any action which may have been brought in any other court in respect of such claim shall be stayed, and the court in which action shall have been brought or any judge thereof on proof of the issue of such summons, and that the movable property in question was so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of the summons aforesaid, and the court of resident magistrate issuing such summons shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings as to such court shall seem just and lawful, and such order shall be deemed to be a judgment of such court and shall be enforced and may be appealed from in like manner as any other judgment.

Proceedings where third parties claim goods taken in execution.

*48. If any person shall wilfully insult the resident magistrate during his sitting in any such court, or any clerk or messenger or other officer of any such court during his attendance therein, or shall wilfully interrupt the proceedings of such court or otherwise misbehave in such court, it shall be lawful for any constable or private person by order of the said court to take such offender into custody and to detain him until the rising of the court, and the resident magistrate shall be empowered if he shall think fit by warrant under his hand to commit any person so offending to prison for any period not exceeding seven days, or to impose upon any such person a fine not exceeding five pounds for every such offence, and in default of payment thereof to commit the offender to prison for any time not exceeding seven days unless the said fine be sooner paid. But in any case in which any such court shall commit or fine any person under the provisions of this section for contempt of court, the resident magistrate shall without delay transmit to the Registrar of the High Court of the Transvaal for the consideration of a member of the said court in chambers a statement certified by such magistrate to be true and correct of the grounds and reason of his proceedings, and shall also furnish to the party committed a copy of such statement so certified as aforesaid.

Contempts of court what and how punishable.

† As in *Gazette*; in Pr. 1900-1902 the word "more" is given.

* For powers of magistrates to enforce obedience to interlocutory and other orders made by them under this Proclamation, see Ord. No. 36 of 1903.

Former
landdrosts'
courts
abolished.

Records, etc.,
to be
preserved in
resident
magistrates'
courts.

Access to
records.

49. All courts of landdrost shall from and after the taking effect of this Proclamation be abolished, and all the records and proceedings whatsoever of and belonging to any such court shall be kept and preserved of record in the court of the resident magistrate hereby created and established having jurisdiction over a district comprising the town or village in which such former court was holden; and all parties concerned shall and may have access and recourse to the said records and proceedings, and to the records and proceedings of any of the courts created and established under or by this Proclamation or by Proclamation No. 6 of 1901; and every judgment and sentence of any inferior court which heretofore existed within any district of this Colony shall and may be proceeded upon in the court of the resident magistrate hereby created and established having jurisdiction over a district comprising the town or village in which such former court was holden, precisely as if the complaint or action whereon the same was given or pronounced had been originally commenced, and the said judgment or sentence given or pronounced in such last-mentioned court. And if at any time hereafter courts of resident magistrates should be created by any such notice as in the *second* section of this Proclamation mentioned, and the district assigned for the jurisdiction of such court by any such notice as is in the *fifth* section of this Proclamation mentioned should be composed of any territory before, then under the jurisdiction of some other court of resident magistrate any judgment or sentence of such last-mentioned court pronounced previously to the publication of such last-mentioned notice, and affecting any person or any property in such territory shall be as valid and effectual, and may be proceeded upon precisely in the same manner as if such territory still remained under the jurisdiction of the court by which such judgment or sentence was pronounced.

Proceedings
now pending
may be
continued.

50. All proceedings, prior to judgment or sentence, which shall be pending in any court of resident magistrate or in any court of landdrost of the late South African Republic at the time of the commencement and taking effect of this Proclamation may be proceeded with in any court of resident magistrate established by this Proclamation in case such last-mentioned court would have jurisdiction in regard to such proceeding were the same commenced *de novo*.

Rules of
court as in
Schedule.

*51. The rules, orders, and regulations respecting the manner and form of proceeding in civil and criminal cases before the courts, hereby established or authorised so to be, shall be the rules, orders, and regulations in that behalf in the Schedule to this Proclamation contained marked "B"; and every rule, order or regulation in the said Schedule contained shall be deemed and taken to be of the same force and effect as if the same or the substance thereof had been embodied in so many enacting clauses of this Proclamation. And it shall be

* The following rules, etc., were made under this section, viz.: Fees for inspection of records (Govt. Notice No. 784, 1906); rules *re* taxation of fees and costs by employment of advocates in resident magistrates courts (Govt. Notice No. 593, 1909).

lawful for the members of the High Court of the Transvaal by any rule or order to be made in like manner as may from time to time be directed, as to general rules and orders of the said High Court to amend or repeal any of the rules, orders or regulations in the said Schedule to this Proclamation contained, and to frame such other or additional rules respecting the manner and form of procedure, and the fees and charges to be taken by officers and practitioners in the said courts, as may be found necessary, and any such amendment or additional rule so made and framed shall have the same force and effect as if it had been originally inserted in the Schedule to this Proclamation.

52. Save as by this Proclamation or by any other law provided the resident magistrate of each of the said districts shall exercise all the jurisdictions and powers, discharge the duties, and enjoy all the privileges heretofore exercised and enjoyed by landdrosts under the existing laws of the late South African Republic; and whenever in any law or resolution of the Volksraad of the late South African Republic, the term "Landdrost" is used the term shall be deemed and construed to mean the resident magistrate.

Resident magistrate to have former powers of landdrost.

SPECIAL PROVISIONS FOR THE WITWATERSRAND DISTRICT.

Sections fifty-three to sixty-three (inclusive) repealed by Act 30, 1908, section two (1).

TEMPORARY PROVISIONS.

64. Cancelled by Proclamation (Admn.) No. 9, 1904, under sub-section (4) of this section.

65. The laws mentioned in the annexed Schedule "E", as also so much of any other law as may be repugnant to or inconsistent with the provisions of this Proclamation, shall, from and after the taking effect of this Proclamation, be repealed.

66. This Proclamation may be cited as the Magistrates Court Proclamation, 1902, and shall take effect from and after the eighth day of May next.

Short title.

SCHEDULE "A".

FORM OF OATH OF ALLEGIANCE.

I.....do sincerely promise and swear that I will be faithful and bear true allegiance to His Majesty King Edward the Seventh.

So help me God.

FORM OF OATH OF OFFICE.

I.....do promise and swear that I will faithfully and diligently execute to the best of my abilities the several duties of the office of Resident Magistrate.

So help me God.

SCHEDULE " B ".

Officers of court.

1. There shall be appointed to every court of resident magistrate so many officers to be clerks of the court as may be found necessary, and also an officer who shall be styled messenger of the court, each of whom shall upon entering into his office take an oath for the faithful performance of his duty in the form following :—

FORM OF OATH OF CLERK OF THE COURT.

I, A.B., do swear that I will truly and faithfully execute the office of clerk of this court without fear, favour, or affection for any one, and that I will not by myself or any other receive or take for my own use any fee or reward for anything done by me in my said office ; and that I will not take or permit or suffer any person under me to take any other than such lawful fees, as I shall be instructed to take or to permit to be taken in my said office ; and for all such I will duly and faithfully account to whomsoever and whensoever I am thereto required.

So help me God.

FORM OF OATH OF MESSENGER OF THE COURT.

I, A.B., do swear that faithfully and diligently I will serve the office of messenger of this court, and execute all summonses and process thereof without favour or affection for any one, and that I will not by myself or any other take, receive, or demand any other than such lawful fees as I may be permitted by this court to receive for anything done by me in my said office.

So help me God.

Additional duties of officers.

2. The clerk of the court, as also the messenger of the court, may, in addition to the duties specially imposed upon them by these rules, be charged with such further and additional duties as the legal adviser to the Transvaal Administration or the resident magistrate may deem fit.

Security by messenger.

3. The said messenger shall give security to the satisfaction of the resident magistrate for the due fulfilment of the duties of his office, and for the due and punctual payment by him to the parties entitled thereto of all moneys which shall come into his hands by virtue of his office.

CIVIL.

Civil Record Book to be kept.

4. The clerk of the court shall keep a book, to be called the Civil Record Book, wherein he shall note (in the manner as shown in Schedule " C " hereunto annexed) the names of the parties, the nature of the plaint, the date of the summons, the date of appearance of parties, and by whom appearance made, the nature of the defence, the day of hearing, and the judgment or sentence of the court.

Mode of civil process—issue.

5. All civil process of the said court may be sued out by any person having any demand or matter of complaint against any other person within the jurisdiction of the court, and the said process shall be dated on the day on which it is issued, and shall be made returnable by the messenger to the court through the clerk of the court, and the said process shall be signed by the clerk of the court and issued by him, and shall be endorsed with the name and address of the party or agent suing out the same.

Form of summons.

6. The process of the court of resident magistrate for summoning any person as defendant in any civil suit or action shall be by summons, and shall call upon such person to appear before the court with his witnesses (if he have any) on a certain day ; and shall contain a concise and succinet statement of the nature of the plaint and the claim. And the said summons shall be as near as may be in the form following, that is to say :

Court of the Resident Magistrate,
District of.....

To the Messenger of the Court.

Summon C.D., of (describing him so particularly that the officer of the court may know where to find him), hereinafter called the defendant, that he appear before the court of the resident magistrate of this district to be holden at....
....., on the.....day of.....next, at.....of the

clock in the forenoon with his witness; if he have any to answer A.B., of , hereinafter called the plaintiff, who complains and says (set out the nature of the plaint).

Wherefore the plaintiff claims (state what the claim is).

And serve on the said defendant a copy of this summons (and where the action is founded on any document or on an account a copy of the said document or account).

And return you on that day to the said court what you have done on this summons.

Dated at....., this.....day of....., 19....

..... Clerk of the Court.

..... Plaintiff's Attorney,

.....Street,

7. Where the party against whom any summons or other process of the said court is issued resides at a distance from the place where the said court is holden, or where, from the number of such summonses or other process, the said messenger cannot possibly serve or execute the same, the said summonses or other process may be served or executed by his sufficient deputy (to be first approved of as such by the resident magistrate) who shall be paid by the said messenger and for whom he shall be responsible.

Execution of summons by deputy messenger.

8. A copy of the said summons together with copies of any documents or account upon which the said complaint or demand is founded shall be delivered to the messenger with the said summons and shall be served either personally on the said defendant, or left for him at his dwelling-house with someone of his household, or in case neither the defendant nor any one of his household can be found after diligent search at his usual or last known dwelling-house or place of business, by affixing the same to the outer or principal door of such dwelling-house or place of business at least forty-eight hours before the time therein specified for his appearance, where the party summoned lives within five miles of the place of holding the said court, three days where the said party lives at a greater distance than five miles and not exceeding ten miles, and so on one day in addition to forty-eight hours for every ten miles of distance at which the party summoned lives from the place of holding the said court. But no case shall be dismissed for or on account of the omission to deliver the copy of any such document or account as aforesaid in case it shall appear to the court that such omission has not in fact and in truth prejudiced the defendant in respect of his defence.

Documents to accompany summons.

9. If the person who is summoned has chosen *domicilium citandi* within the town or village where the court is to sit the service of the summons may be effected at the domicile so chosen.

Service of summons.

10. Where two or more persons or members of a syndicate are cited together in one summons the same shall be served on each of them in the manner hereinbefore set out, save and except in the case of married persons not separated either *a mensa et thoro* or in respect of their goods and in the cases in the next succeeding section mentioned. When the names and addresses of the members of a syndicate are unknown to the plaintiff and the secretary, manager, or any member thereof to whom the names and addresses of the remaining members are known refuses to give the plaintiff information with reference thereto, it shall be competent for the court to order such secretary, manager, or member to furnish the plaintiff with a list of the names and addresses of the members of such syndicate.*

Service on joint defendants.

11. In the following cases the service of the summons shall be effected as follows:

Service on a corporation, partnership, or trustee of insolvents, etc.

(a) When directed against a corporation or incorporated company in so far as is not otherwise provided by law, at the local office of such corporation or company.

(b) When directed against two or more persons who are partners in trade or business at their office or place of business, or if there be none such, on any one of them personally.

(c) When directed against two or more persons who are trustees of an insolvent estate, liquidators of a company, executors, curators, or guardians, on any one of them personally or at his office.

* For powers of enforcing such an order by committal for contempt of court see Ord. No. 36 of 1903.

Service not to be effected on Sunday.

12. No service of any process, order, notice, or proceeding, or any act done in any civil action except the case of arrest, shall be valid or effectual if performed on a Sunday. But all process returnable on a Sunday or upon a holiday shall be returned on the following day; and any act required to be done by any party in court, at a time which would otherwise fall on a Sunday or holiday, shall be valid and effectual if done on the following day.

Endorsement of summons by messenger.

13. The messenger of the court shall endorse or annex to the summons the manner of his executing the same, and shall return the said summons to the clerk of the court.

Conduct of case by any person duly appointed by plaintiff or defendant.

14. It shall be permitted to any plaintiff or defendant in the said court to appear and conduct his case by means of any person authorized by power of attorney under his hand to be filed with the clerk of the court; and when it shall be made to appear to the satisfaction of such court that, by reason of the absence from home of any † defendant, such power of attorney could not be obtained, then it shall be permitted to any one of his family, or any one having a general authority to manage his affairs in his absence and willing to conduct the said case to appear for the defendant and conduct the same. But nothing shall in the taxation of costs against either party be allowed for the attendance or services of any person not being enrolled in such court to practise as an agent therein, and not being an attorney of the High Court of the Transvaal. And every such court of resident magistrate, upon being satisfied that any person who appears to have a right of action, is from poverty unable to sue out, the process of such court may order all such process to issue without fee or charges, and may appoint an attorney or agent to act for such person. Provided always, that such person, should he recover and receive sufficient from the other party, shall be liable to pay and make good all fees and charges so remitted.

Hearing.

15. On the court day appointed for appearance of the parties, unless the said summons shall have been withdrawn, the clerk of the court shall cause the said parties, plaintiff and defendant, to be called, and if they, or any one duly authorized on their behalf, appear he shall record the same, and the court shall proceed to enquire of and determine the said complaint or demand, and shall ask ‡ the defendant or his agent, whether he will confess or deny the same, or if he will make any counter-claim against the plaintiff, and his answer shall be recorded.

Denial of complaint or counter-claim.

16. If the defendant deny, or except to the said complaint, or make any counter-claim, the court shall, when so requested by the plaintiff, postpone the hearing of the case, and order the defendant to give notice in writing to the plaintiff of the nature of his defence, exception, or counter-claim, within such time as the court may think reasonable.* The costs of such postponement shall be in the discretion of the magistrate.

Procedure in absence of defendant.

|| 17. *If neither the defendant nor anyone representing him appear on the court day appointed for that purpose then upon the request of the said plaintiff, and upon being satisfied by the return of the messenger of the court endorsed upon the summons that the same hath been duly served it shall be lawful for the said court:*

(a) *in case the claim shall be founded upon a bill of exchange, promissory note, good-for, bond, or other written acknowledgment of debt commonly called a liquid document accompanied by a notarial protest or certificate of presentation in case same be required by law; and*

(b) *in cases founded upon a liquidated claim upon delivery to the court of an affidavit verifying the statements made in the complaint or demand in the summons and duly sworn to by the plaintiff; and*

(c) *in all other cases after hearing the plaintiff and his witnesses,*

Provisional judgment.

to give such judgment thereon as the plaintiff shall be entitled to, but the said judgment shall only be provisional in its nature, and no execution shall issue upon it until the plaintiff, together with some one as his surety, to be approved of by the said court, shall give security for full restitution of the amount to be levied and raised under such judgment should the same be reversed, and the form of such security shall be the same as that set forth in the thirty-fourth of these rules and regulations, save and except that the words "notwithstanding that the said C.D. has noted an appeal against the same" shall be omitted in the body of the said form, and the word "cause" shall be substituted for the word "appeal" in the end thereof.

† As in *Gazette*.

‡ As in *Gazette*; words "shall ask" omitted in Pr. 1900-1902.

* For powers of enforcing such an order by committal for contempt of court see Ord. No. 36 of 1903.

|| This rule substituted by Govt. Notice No. 1236 of 1904.

18. The defendant may at any time within three months next after the levy made under any writ of execution, issued by virtue of any such provisional judgment, take out a summons of the said court, calling upon the plaintiff in the original action to show cause why the judgment obtained by him should not be reversed. And, if it shall be made to appear to the said court by oath that the defendant was absent from his home at the time when the summons of the said court was served, and that he did not receive the same a sufficient time before the day of the return thereof to be able to obey the same, and that he did not absent himself from home for the purpose of avoiding the service of the said summons, or that having been duly summoned he was by just and reasonable cause prevented from attending the court in pursuance of the said summons, then the said court shall order the said judgment to be opened, and shall permit the defendant to answer the said complaint, or demand upon the terms nevertheless of payment of the costs incurred by his default; and the evidence before given by the said plaintiff shall, on the re-hearing of the case, be read from the evidence and proceeding taken down by the clerk of the court, and the said plaintiff shall be at liberty to bring further evidence if he think fit: and upon the said re-hearing the case except as aforesaid shall proceed as if the defendant had appeared on the original summons.

Procedure for setting aside of provisional judgment by defendant, and reopening of case.

19. If the defendant, or some one duly authorized on his behalf, do not within three months next after such levy as aforesaid take out such a summons as aforesaid, the provisional judgment shall become final, and the security aforesaid shall become *ipso facto* null and void. But if upon hearing of any such summons the judgment therein mentioned shall be reversed or set aside, then the defendant shall be entitled without any cession to sue upon the said security for the recovery of the sums therein mentioned, less the costs incurred by his default.

When provisional judgment becomes final.

20. If any person summoned to appear on any day to answer any complaint or demand shall appear according to the said summons, and the party complaining shall make default, the court shall adjudge the said plaint to be dismissed, or if he appear, and the judgment of the court be for the defendant, the said court shall adjudge to the said defendant his costs to be taxed by the clerk of the court.

Dismissal of plaint on non-appearance of plaintiff.

21. After judgment of the court against the party complaining for default of appearance, the same may, upon payment of costs, be admitted to commence a new action for the same cause, and the court may, in any case when it shall see fit, absolve the defendant from that instance instead of giving judgment in his favour, in which case the plaintiff, upon the payment of the costs awarded against him, may commence a new action for the same cause. But the judgment of the said court given in favour of the defendant, when pronounced after hearing of the cause, is a perpetual bar to any other suit or action for the same cause.

Terms on which action may be commenced *de novo*.

22. When a case is postponed *sine die*, whether at the request of the parties or by the court, the party who wishes to place such case again on the roll shall give the other party at least forty-eight hours previous written notice thereof.

Notice of postponement of case.

23. The process of the said court for compelling the attendance of any person to give evidence therein shall be by summons issued by the clerk of the court, and directed to the messenger thereof, and shall be served and returned by him in the same manner as any other summons of the said court, and the said summons may be sued out by either party requiring the attendance of any witness, and shall be as near as is material in the form following, that is to say:

Process to compel attendance of witnesses.

Court of the Resident Magistrate,
District of.....

To the Messenger of the Court.

Summon A.B., of, etc., C.D., of, etc., and E.F., of, etc., that laying aside all and singular business and excuses they and each of them appear in person before this court at....., on the.....day of.....next, at.....of the clock in the forenoon to testify and declare all and singular those things which they or any of them know in a certain case now pending in the said court between I.K., plaintiff, and N.O., defendant; and that they or either of them by no means omit so to do at their peril. Serve on each of them the said A.B., etc., a copy of this summons and return to the said court what you have done thereupon.

Dated at.....this.....day of.....19....

.....
Clerk of the Court.

*Subpœna
duces tecum.*

24. If any witness have in his possession or control any deed, instrument, or writing which the party requiring his attendance is desirous to show in evidence, then the said summons shall be in the form following, namely: (as in the former case to the words "I.K., plaintiff, and N.O., defendant", and proceed as follows): "And also that they bring with them, and produce at the time and place aforesaid, a certain deed or instrument in writing, bearing date, etc. (describing very accurately the thing to be produced), and that they or either of them by no means omit to do so at their peril. Serve, etc." (As before).

Tender of
travelling
allowance.

25. There shall be delivered to the said messenger, together with the said summons, so many copies thereof as there are witnesses to be summoned, and also such sum or sums of money as the party for whom they are to be summoned intends that the said messenger shall pay or offer to the said witnesses respectively for their travelling expenses: And if any person being duly summoned to give evidence, and his travelling expenses being paid or offered to be paid to him, and having no sufficient excuse, shall neglect or refuse to attend or give evidence according to said summons, then the said court shall impose upon the said person a fine for his default, not exceeding twenty-five pounds sterling, and for non-payment shall commit such person to the gaol of the said district for any time not exceeding one month. Provided that as often as any person duly summoned shall fail to appear, it shall be lawful for the resident magistrate, in case no lawful cause for such non-appearance shall seem to him to exist, to issue his warrant for the apprehension of the party making default in order that he may be brought up to give his evidence, and to be otherwise dealt with according to law. The court may on cause shown remit any such fine or punishment which it may have imposed.

Penalty for
non-
attendance of
witness.

Postponement
of case owing
to non-
attendance of
material
witness.

26. If it shall appear to the said court upon oath that any person who is a material witness for either party to any cause having been duly summoned, doth not attend at the hearing thereof, then the resident magistrate shall at his discretion either postpone the hearing of the said case to another day then to be appointed by him, or else take the examination of such witnesses as appear, and suspend the further hearing of the said case to another day: which postponement or suspension, and the cause thereof, and the day appointed for the further hearing shall be recorded.

Evidence to
be oral and in
open court.

27. All persons examined or giving evidence in the said court shall be examined orally and apart and in open court; and shall be sworn by the resident magistrate according to the form of the religion they respectfully profess, "to tell the truth, the whole truth, and nothing but the truth": but all persons entitled by law to affirm instead of taking an oath may so affirm.

Evidence of
records of
court.

28. Where in the course of any case it may be necessary for either party to produce and show to the court any record, entry, or document of the said court, it shall not be required of the said party to produce any office copy of such record, entry, or document; but the clerk of the court shall at his request produce and show or refer to the original.

Proceedings
and objections
to be taken
down in
writing.

29. In every civil case the clerk of the court shall take down the evidence and proceedings in writing, and shall also note any objections made by either party to any evidence received, or to any evidence or any document tendered by either party to the court, and shall duly mark each document put in, and note such mark in the record.

Evidence for
defence.

30. The case on the part of the plaintiff having been heard, the defendant, or some one on his part, shall in like manner produce any writing or documents he may desire to have read to the court, and any witness to be examined in support of his answer or denial.

Petition of
interested
third parties
to intervene.

31. Any person having an interest in any proceedings pending in any court of resident magistrate between other persons, may petition such court for leave to intervene, and the court, after hearing the petition and also the parties, may make such order as the circumstances shall require.

Record of
judgments.

32. All the judgments and sentences of the said court shall be given in open court, and shall be recorded by the clerk in the proper column of the Civil Record Book.

Notice of
appeal.

33. Any party against whom any final judgment, decree, or order of the said court has been given in any civil case (and a decree of absolution from the instance shall be deemed to be such a final judgment or sentence), if he intend to appeal therefrom to any superior court, shall within eight days after the granting of such judgment, decree, or order, make known his intention to the

clerk of the court, who shall note his appeal, with the date thereof, in the Civil Record Book ; the party noting such appeal shall prosecute the same within such time as may be prescribed by any rule of the High Court of the Transvaal, and in default of such prosecution, the appeal shall be deemed to have lapsed, unless the said High Court shall see fit upon motion to make an order to the contrary. A cross appeal may be noted at any time within eight days of the noting of appeal, and shall thereupon be prosecuted in the same manner, and within the same time as in the case of an ordinary appeal.

34. In any case where an appeal may have been duly noted, and the court may have directed that security shall be given, the said security shall be as near as may be in the form following : Security directed by court.

Court of Resident Magistrate,
District of.....

A.B., of, etc.

Plaintiff.

against

C.D., of, etc.

Defendant.

Whereas the said A.B., on the.....day of..... recovered by judgment of the court of resident magistrate of the district of against the said C.D. the sum of, together with the sum of for costs in a certain case before the said court, and whereas the said court has directed the said judgment notwithstanding the said C.D. has noted an appeal against the same to be carried into execution upon security being given for restitution : Now, therefore, the said A.B. and L.M. of....., farmer, as surety for him the said A.B., hereby severally undertake and bind themselves jointly and severally to refund and make restitution of the above several sums of and should the judgment of the said court be reversed, and further severally to conform to and execute such judgment, order, or decree as shall be given and pronounced upon or in respect of such appeal.

In witness whereof the said A.B. and L.M. have hereunto set their hands at....., on this.....day of....., 19....

A.B.
L.M.

.....
Clerk of the Court.

35. Where the judgment of any court of resident magistrate in any civil or criminal case shall be appealed from the magistrate by whom such judgment was granted shall deliver to the clerk of the court for transmission to the registrar of the court for hearing of the appeal a statement of the facts which he shall find to have been proved and his reasons for the judgment pronounced.

Magistrates in civil and criminal cases appealed against to send to registrar of court a statement of facts proved and reasons for judgment.

36. After judgment or sentence of the court is given in any case, the clerk of the court shall, at the request of the party in whose favour the same is given, ascertain and allow the necessary costs and expenses of the said suit against the party to be charged therewith : and in the said taxation he shall charge and allow all such necessary payments and disbursements made in the said case as are provided to be paid by the tariff of charges in force for the time being, and all such other reasonable sums of money as the party in whose favour the said judgment or sentence is given has paid in bringing before the court any necessary witnesses or evidence or otherwise : and where he shall think it reasonable to allow any expense not herein provided for the same not being prohibited by any rule of the said court, then he shall take the direction of the said court thereon and make his allowance accordingly. Any party who objects to the taxation of the clerk of the court may bring the same free of charge into revision before the magistrate, and the latter's decision may at any time within one month

Taxation of costs.

(exclusive of High Court vacation time), be brought into revision by way of application before the High Court of the Transvaal after due notice to the opposite party, failing which revision the objections made shall lapse.

Suing out of process for execution of judgment.

37. The party in whose favour any judgment or sentence of the said court shall be given in any civil case in regard to which an appeal shall not have been noted, or having been noted shall have been withdrawn, may sue out of the office of the clerk of the court the process of the said court for the execution thereof.

Execution of judgments in cases of appeal.

38. In all cases of appeal the said court shall conform to and execute such judgments, orders, and decrees as shall be afterwards made and pronounced thereon in like manner as any original judgment, sentence or decree by the said court could or might have been executed.

Process for execution of judgment.

39. The process for execution of any sentence or judgment of the said court shall be by warrant under the hand of the clerk of the court directed to the messenger of the said court as near as may be in the form following, that is to say :

Court of the Resident Magistrate,

District of.....

To the Messenger of the Court.

Whereas in a certain case heard in this court wherein A.B., of, etc., was the plaintiff, and C.D., of, etc., was the defendant, the said A.B., on the..... day of.....last, by the judgment of the court, recovered against the said C.D. the sum of together with the sum of for his costs (which said judgment has been duly affirmed on appeal—if the case so be—with the further sum of for costs thereon). as appears in the proceedings of the said court: this is therefore to require you that of the movable property of the said C.D. in this district you cause to be levied and raised the debt (or damages) and costs aforesaid, together with your charges about the same, and pay to the said plaintiff the debt (or damages) and costs aforesaid and return to this court what you have done by virtue hereof, for which this shall be your warrant.

Dated at....., this..... day of....., 19....

Clerk of the Court.

Inventory by person against whom judgment given, of goods not belonging to him.

40. Where any person against whom any judgment of the court shall have been given shall, before any warrant shall have been taken out to levy in execution of the process of the said court, appear before such court, and there deliver to the clerk of the court an inventory of goods duly proved upon oath to belong to the said person, and to exceed in value the amount to be levied under such judgment, with the costs thereof, and shall then and there undertake in writing, together with some sufficient surety, that the goods or chattels contained in the said inventory shall be brought for sale at such time and place as the court shall appoint, unless the person in whose behalf the said process was issued be sooner satisfied in respect of his debt or damages, as the case may be, then no further proceedings shall be had in respect of such judgment of the court until after the day so appointed for the sale of such goods or chattels; and the form of such security shall be in substance and as near as is material, according to the form prescribed in respect of the security hereinafter set forth for not making away with goods laid under legal attachment by the process of the said court.

Duty of messenger in execution of judgment.

41. The messenger of the court shall, upon receiving the said warrant, repair to the house or place of business of the defendant within twenty-four hours if he live at the town or place where the said court is holden, or within forty-eight hours if within five miles thereof, or if at any greater distance therefrom within so many days' distance in addition thereto as the said party resides therefrom, and there demand payment of the said debt or damages and costs, or else require that so much movable property be pointed out as the said messenger may deem sufficient to satisfy the exigency of the said warrant, and if he comply therewith the said messenger shall make inventory thereof and lay a judicial attachment on the same, but if the debtor will not point out such property, and the judgment of the court do not declare any to be specially bound, then the said messenger shall immediately lay an attachment under inventory on as much movable property belonging to the debtor as he may deem sufficient to satisfy the execution, and if the judgment of the court declare any particular property to be specially bound and liable to execution for the judgment, then the said messenger shall first take the same.

Inventory of movable property.

42. The said messenger shall deliver a copy of the said inventory signed by himself to the debtor, or if he will not accept of it shall leave the same on the premises, which inventory shall have subjoined thereto a notice in the following terms :

Delivery of copy of inventory.

Court of the Resident Magistrate, District of.....

To C.D.

Take notice that I have this day seized and laid under judicial attachment the articles comprised in the above inventory in pursuance of a warrant to me directed under the hand of the clerk of the court for the district of..... whereby I am required to cause to be levied and raised of your movable property in this district the sum of....., and....., costs recovered against you by the judgment of the said court in a certain case wherein A.B. was the plaintiff, and yourself the defendant (as the case may be), and also for my charges in and about the said warrant.

Dated at....., this.....day of....., 19....

Messenger of the Court.

43. Where any person whose movable property has been attached in execution of the process of the said court will undertake in writing, together with some sufficient surety that the same shall be produced on the day appointed for the sale thereof if the person in whose behalf the said process was issued shall not be sooner satisfied in respect of his debt or damages, as the case may be, then the messenger of the said court shall leave the said property so attached and inventoried as aforesaid upon the premises where the same was found ; and the security bond shall be as near as may be, according to the form following :

Undertaking for production of person whose movable property attached in execution.

Court of the Resident Magistrate, District of.....

A.B. of, etc.

Plaintiff.

against

C.D., of, etc.

Defendant.

Whereas the said A.B., on the.....day of.....last, by judgment of the court of resident magistrate of the district of....., recovered against the said C.D. the sum of....., together with the sum of..... for costs in respect of a certain case heard in the said court : and whereas by virtue of a certain warrant under the hand of the clerk of the said court, bearing date on, etc., directed to E.F., messenger of the said court, the said E.F. has seized and laid under attachment in respect of the said judgment, and in respect to the execution thereof the undermentioned articles, viz. :

.....

Now therefore the said C.D. and L.M. of....., as surety for him, the said C.D. hereby severally undertake and promise to the said E.F. that the said goods shall not be made away with or disposed of, but the same shall remain in possession of the said C.D. under effect of the said attachment, and shall be produced to the messenger of the said court on the.....day of.....next (the day appointed for sale) or any other day when the same may be required in order to be sold in execution of the said judgment and expenses if the same shall not be sooner satisfied to the said A.B. ; otherwise the said L.M. hereby undertakes and binds himself to pay and satisfy the said judgment, costs, and expenses for and on behalf of the said C.D.

In witness whereof the said C.D. and L.M. have hereunto set their hands on this.....day of.....19....

C.D. L.M.

E.F.,

Messenger of the Court.

44. If the defendant will not undertake, together with a sufficient surety for the production of the said goods in manner provided for that purpose, then the messenger shall either remove the same to some convenient place of security, or if the same be cattle or such property as it may be inconvenient to remove, may leave the same upon the premises in the charge and custody of some person for him until the day appointed for the sale thereof.

Removal of goods by messenger in case of no undertaking to produce.

Inventory of specie and documents.

45. Where specie is found and attached the number and kinds thereof shall be specified in the inventory, and where any documents are attached they shall be specified, and such specie or documents shall be sealed up and conveyed to the town or village where the court is holden.

Power to entry by force, if necessary.

46. If the messenger finds the doors of the defendant's house locked, or if admission thereto or the opening of any room or piece of furniture therein be refused him, or if no one can be found who represents the defendant the messenger may, if necessary, open the door or such furniture, and may use force to that end.

Penalty for obstruction of messenger.

47. In case any person shall in any way obstruct the messenger in the execution of his duty such person shall be liable to a fine not exceeding fifty pounds, or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Duty of custodian of attached goods.

48. The custodian of attached goods may not use, let, or lend the attached goods, nor permit them to be used, let, or lent, nor may he in any way do anything which will decrease the value of the attached goods on pain of forfeiture of his remuneration and of liability to make good the damage and loss.

49. If the goods attached shall have produced any profit or increase the custodian shall in like manner as is provided in the preceding rule be responsible therefor.

Warrant for apprehension in case of disposal.

50. If it shall appear upon oath to the resident magistrate of the said court that any person has made away with or disposed of any goods so left in his possession under security as aforesaid, the said magistrate shall forthwith issue his warrant for the apprehension of the said person to answer for the said fraud according to law.

Interpleader summons.

51. If any movable property taken under and by virtue of any process of execution issued out of any court of resident magistrate shall be claimed by any third party as his property and not liable to such execution, the court of resident magistrate out of which such process issued, upon such claim being reported by the messenger thereof shall issue a summons calling upon the plaintiff and the claimant to appear in order to enquire into and determine the question in dispute, and such summons shall be as near as may be in the form following :

Court of the Resident Magistrate,
District of.....

To the Messenger of the Court.

Summons A.B., of (describe the plaintiff in the former suit) and G.H., of (describe the claimant) that they severally appear before the court of the resident magistrate of this district to be holden at.....on the.....day of....., 19...., at.....o'clock in the forenoon with their respective witnesses (if they have any) then to have it determined and declared by the judgment of the said court whether certain movable property attached on the.....day of....., 19...., by you, the said messenger, under and by virtue of a certain writ of execution issued out of the said court, commanding you of the movable property of one, C.D., to levy and raise certain sums of money in the said writ mentioned, and which movable property is claimed by the said G.H. as being his property and not liable to such execution be or be not the property of the said G.H., and be or be not so liable; and serve upon the said A.B. as upon the said G.H. a copy of this summons, and return to this court what you have done thereon.

.....
Clerk of the Court.

Sale in execution of process.

52. Any property sold in execution of the process of the said court shall be sold publicly and for ready money by the messenger or his deputy (to be approved of by the said court) to the highest bidder at or as near to the place where the same was taken as may be convenient for the sale thereof; and the said messenger shall publish notice of the sale in the *Gazette* and in some local paper, and shall affix notice of the said sale and of the day and place thereof on the door of the court-house, or on some other like public building in the place where the said court is holden, as also at or as near as may be to the place where the said sale is actually to take place seven days at least before the day appointed for the said sale; which day shall be not earlier than the fourteenth day from the time of seizure or attachment.

53. The form of summons in cases of civil imprisonment shall be as follows : Civil imprisonment form of summons.

To the Messenger of the Court.

Summon C.D., of (describe the defendant as in the former process) that he appear before the court of resident magistrate of this district, to be holden at ... on the ... day of ... next, at ... o'clock in the forenoon, to show why a decree of civil imprisonment should not be made against him at the suit of E.F., of (describe the plaintiff as in the former process) in respect of the non-payment of the sum of ... (insert the joint amount of debt and costs) recovered against the said C.D. by the said E.F. by a judgment of the said court bearing date the ... day of ... 19...., and for the recovery of which sum a warrant in execution was on the ... day of ... last past duly sued out against the movable property of the said C.D., and in regard to which warrant a return has been duly made that no movable property has been found whereof could be made the amount stated in the said warrant, or any part thereof (or whereof could be made more than the sum of ... parcel of the amount stated in the said warrant); and serve on the said C.D. a copy of this summons, and return to this court what you have done thereon.

Dated at ... this ... day of ... 19....

Clerk of the Court.

Plaintiff's Agent.

54. As often as the resident magistrate shall see cause to grant a decree of civil imprisonment, the defendant shall be committed to the gaol of the district by warrant in the form following, that is to say:

Court of the Resident Magistrate, District of

To the Messenger of the Court and to the

Keeper of the Public Prison of

These are to command you, the said messenger, to take C.D., of (describe as in the summons in the last preceding rule), and deliver him to the keeper of the public prison of the district aforesaid, together with this warrant, there to be safely kept until he shall have paid to E.F., of (describe the plaintiff as in the summons aforesaid) the sum of ... which the said E.F. recovered for his debt and costs by judgment of this court, bearing date the ... day of ... 19...., or until the expiration of ... months from the day on which the said C.D. shall be received into the said prison by virtue of this warrant, whichever of the two shall first happen, or until the said E.F. shall be otherwise legally discharged; and for your so doing this shall be your warrant.

Dated at ... this ... day of ... 19....

Clerk of the Court.

When a decree of civil imprisonment shall be made after an insufficient levy under process of execution against property, the words "parcel of the sum of ..." should be inserted before the words "which the said E.F. recovered for his debt and costs", etc.

55. Every notice to a defendant that application will be made for an order condemning him to deliver up possession of any house, land, or premises on the ground that the messenger has made a return that no movable property has been found wherewith to satisfy a judgment for rent due in respect of such house, land, or premises shall be served through the messenger upon the defendant or his agent at least twenty-four hours before the time appointed for the making of such application, and shall be as near as may be in the form following:—

Notice to deliver up possession of house, land, or premises.

Court of the Resident Magistrate, District of

A.B., of

Plaintiff.

C.D., of

Defendant.

Take notice that whereas on the ... day of ... last, by judgment of the court of the resident magistrate, district of

you were condemned to pay to A.B., of....., the sum of....., being rent due in respect of (mention here the house, land, or premises in respect of which the rent is due):

And whereas a writ of execution has been sued out against your movable property for the amount of such rent on which writ a return has been made that no such property as aforesaid has been found, whereof could be made the amount stated in such writ:

Now, therefore, take notice that application will be made to the court of resident magistrate for this district at....., on the.....day of....., at.....o'clock in the forenoon for an order condemning you to deliver up possession of the aforementioned (house, land, or premises as the case may be) to the said A.B.

Dated at....., this.....day of....., 19....

.....
Plaintiff's Agent.

Decree for delivery up of possession of house, land, or premises.

56. When a decree for the delivery up of possession of any house, land, or premises shall be made the warrant for the execution of the same shall be as near as may be in the form following:

Court of the Resident Magistrate,
District of.....

To the Messenger of the Court.

It having appeared to this court that C.D., of (describe the tenant as in the summons) holds from and under A.B., of (describe the landlord as in the summons) a certain dwelling-house (or apartment or other tenement or premises according to the fact) situate (describe the local situation), and that the said A.B., who has recovered judgment and sued out execution against the property of the said C.D. for the amount of certain rent of the said (name the sort of premises) due and in arrear hath not had the said property, or otherwise the amount of the said rent, or any part thereof; and the said A.B. having afterwards, to wit, on the.....day of....., 19...., by the judgment of this court been duly decreed to be put into possession of the said (name the sort of premises); this is, therefore, to authorize and require you to put the said A.B. into possession of the same by removing therefrom the said C.D., and all other persons claiming from, through, or under him, for which this shall be your warrant; and return to the court what you have done in pursuance thereof.

Dated at.....this.....day of.....19....

.....
Clerk of the Court.

Warrant to messenger.

* 57. When a decree for the delivery up of possession of property shall be made, the warrant for the execution of the same shall be directed to and executed by the messenger of the court, and shall be as near as may be in the form following:

Court of the Resident Magistrate,
District of.....

To the Messenger of the Court.

Whereas in a certain case heard in this court, wherein A.B., of, etc., was the plaintiff, and C.D., of, etc., was the defendant (or

Whereas upon application made by A.B. in the matter of, etc.)

the court did decree that the said defendant should deliver to the said plaintiff a certain (describe the thing to be delivered, or state what the decree of the court is).

This is to authorize and require you to take the said (describe the thing) from the said defendant or any person claiming from, through, or under him, and place the said plaintiff in possession thereof (or state what is to be done) for which this shall be your warrant.

And return to the court what you have done in pursuance hereof.

Dated at....., this.....day of....., 19....

.....
Clerk of the Court.

|| 57a. The messenger shall receive and detain in prison all persons arrested by any order, writ, or judgment of the court or committed to the custody of such messenger by the court.

* As amended by Govt. Notice No. 462 of 1906.
|| Rule 57a added by Govt. Notice No. 462 of 1906

58. Where the judgment or sentence of the said court in any case is appealed from, and the said appeal is duly prosecuted in manner provided for that purpose the clerk of the court shall forthwith transmit the proceedings in the said case to the Registrar of the High Court of the Transvaal, together with a certificate under his hand subjoined to the said proceedings in the following terms :

Transmission of records to Registrar of Supreme Court in cases of appeal.

Court of the Resident Magistrate,
District of.....

I....., clerk of the court of resident magistrate for the district of....., hereby certify and declare that the above are the true proceedings in the case A.B. against C.D. ; and that the said proceedings contain true notes of all evidence received by the said court, objected to, or offered by either party, and rejected by the said court on the hearing of the said case.

Dated at....., this.....day of....., 19....

.....
Clerk of the Court.

59. All fines imposed by the court in any case, civil or criminal, shall be paid to the clerk of the court ; and the same, together with all fees of office received by him in every month shall be paid over on the first day of the following month to the receiver of revenue of the district ; and the said clerk shall deliver therewith an account in such form as the receiver of revenue shall, from time to time, direct. And the officers of the said court shall take such fees as are allowed by law, and the same shall be taken at a time when anything is required to be done by any officer for which such fees are allowed.

Payment of fines.

60. If the plaintiff is not domiciled in this colony, or is an unrehabilitated insolvent, the defendant may require him to find security for the costs of the suit before the case is proceeded with.

Security by plaintiff in certain cases.

61. In all cases where it may be necessary to sue any one by edict, the plaintiff shall first apply to the court for leave so to do, and if such leave be granted the court, taking the circumstances into consideration, shall determine the manner in which the summons is to be served, as also the date of appearance. In case no appearance shall be made by the defendant, judgment shall not be given against him unless a statement under oath be made or the court be satisfied in some other way that a reasonable and proper effort has been made to serve the summons on the defendant personally.

Edictal citation.

CRIMINAL.

62. Where the public prosecutor shall by virtue of his office have determined to prosecute any party in the said court for any crime or offence within the jurisdiction of the said court he shall forthwith lodge with the clerk of the court a statement in writing of the charge or complaint against the said person, describing him by his name, surname, place of abode, and occupation or degree ; and setting forth shortly and distinctly the nature of the said crime or offence, and the time and place at which the same was committed.

Complaint by public prosecutor.

63. Any private person entitled to prosecute for any crime or offence may prosecute summarily for such crime or offence by lodging his complaint with the clerk of any court of resident magistrate having jurisdiction, nor shall any certificate of any competent public prosecutor to the effect that he declines to prosecute for such crime or offence be necessary. But any competent public prosecutor may, at any time before judgment, intervene in any such case, and assume the management and conduct thereof, and the clerk of the court shall in the column of the criminal record book hereafter mentioned, headed "Remarks", etc., make an entry of such intervention.

Complaint by private party.

64. The clerk of the court shall keep a book ruled and divided into columns headed and entitled according to the form in the schedule hereunto annexed, marked "D", which shall be called "The Criminal Record Book of the Court of the Resident Magistrate, District of.....", and the said clerk shall enter therein in manner hereinafter set forth all criminal proceedings in the said court, and shall present the said book to the resident magistrate at the first sitting of the court upon every court day, and the magistrate shall, before the rising of the court, sign the same.

Criminal Record Book.

65. The clerk of the court shall, upon such complaint being lodged with him, either by the public prosecutor or any private party forthwith enter into the proper columns of the Criminal Record Book the name of the prosecutor.

Particulars to be kept.

the name of the party charged, the crime or offence charged or complained of, the day of commitment of the party charged, and by whom committed, and any remarks which it may be proper to record.

Trial of offenders.

66. All persons to be prosecuted upon any criminal charge in the said court shall be brought to trial at the next possible court day; but whenever it shall be made to appear on oath to the satisfaction of the resident magistrate that any criminal case cannot be proceeded with upon the day appointed for that purpose without danger of defeating the ends of justice, he shall adjourn the hearing thereof to some future court day, which day shall be specified by him; and the said adjournment and the cause thereof shall be noted by the clerk in the last column of the said Criminal Record Book; further adjournments may, if necessary, be made from time to time.

Summons by messenger.

67. The clerk of the court shall, upon or after the lodging of the said complaint, at the request of the prosecutor (and at his charge where the prosecution is by a private party), issue and deliver to the messenger of the said court the process of the said court for compelling the appearance of the said party to answer the charge and of the witnesses in support thereof, together with so many copies of the said process as there are persons to be summoned, if there be more than one; and the said messenger shall serve a copy thereof on every defendant, and shall at the same time explain to him the nature and exigency of the said process; and the said process shall be by summons, and shall be as near as may be in the form following:

Court of the Resident Magistrate,
District of.....

To the Messenger of the Court.

You are hereby required and directed in His Majesty's name on the sight hereof to summon..... of, etc. (describing him particularly) that he appear personally before the court at....., on the.....day of..... next, at..... o'clock in the forenoon, then to answer and abide the judgment of the court upon the complaint and information of....., who prosecutes in the name and on behalf of His Majesty, or of (describing him particularly) that the said....., on or about the.....day of..... last, violently beat and assaulted the said....., of, etc. Serve on the said..... a copy of this summons and return to this court what you have done hereon.

Dated at....., this.....day of....., 19....

Clerk of the said Court.

Cases where summons unnecessary.

68. It shall not be necessary to issue a summons in respect of petty cases upon complaint of the police, cases of drunkenness and contravention of the Liquor Law, breaches of the peace, petty assaults, contraventions of the Master and Servants Law, of town regulations, and of native pass laws; the accused may, in any such case, be summarily prosecuted, the charge being described in the charge sheet.

The accused or his legal adviser shall be entitled at all reasonable times to inspect the charge as noted with the clerk of the court or filled in on the charge sheet.

Compelling attendance of witnesses.

69. Either party desiring to compel the attendance of any person to give evidence in any criminal case, may take out of the office of the said clerk of the court the process of the court for that purpose; and in like manner when the party charged with any offence is unable to pay the costs of such process the clerk of the court shall summon on his behalf such witnesses as he shall desire to have summoned, and shall satisfy the said clerk to be material and necessary for his defence; and the said process shall be as near as may be in one or other of the following forms:

Court of the Resident Magistrate,
District of.....

To the Messenger of the Court.

You are hereby required in His Majesty's name to summon..... of, etc....., of, etc., and..... of, etc. (describing them particularly) that they and each of them appear personally before this court at....., on the.....day of.....next, at.....o'clock in the forenoon to testify and declare all they and each of them know concerning a certain charge preferred by

the public prosecutor against....., of (describing particularly the person charged). Serve on each of them a copy of this summons and return to this court what you have done hereon.

Dated at....., this.....day of....., 19....

Clerk of the Court.

Court of the Resident Magistrate,

District of.....

To the Messenger of the Court.

You are hereby required and directed to summon..... of, etc. (describing them particularly), that they and each of them appear personally before this court at....., on the..... day of..... next, at..... o'clock in the forenoon to testify and declare all they and each of them know concerning a certain complaint preferred by..... of, etc., against....., of, etc., and serve on each of them a copy of this summons, and return to this court what you have done hereon.

Dated at....., this..... day of....., 19..

Clerk of the Court.

70. If upon the day appointed for the appearance of any party to answer any charge he shall neglect to appear, and the court shall be satisfied, upon the return of the messenger, that he was duly summoned, then the resident magistrate shall, on the request of the prosecutor, issue his warrant for the apprehension of the said party, and shall also, if he think fit, impose on the said party for his default a fine not exceeding five pounds sterling, and in default of payment of such fine may sentence him to imprisonment with or without hard labour for a period not exceeding one month, and may further declare the bail (if any) forfeited.* Non-appearance of accused.

71. If the prosecutor, being a private party, do not appear on the court day appointed for appearance, the charge or complaint shall be dismissed; and where the court, upon hearing the charge or complaint, shall pronounce the same unfounded and vexatious, the resident magistrate shall award to the defendant, on his request, such costs as the said magistrate may think fit; provided always that such dismissal shall not prevent the public prosecutor from afterwards, should he see fit, taking up the case. Non-appearance of private party prosecuting.

72. In case of the non-attendance of any person duly summoned to give evidence, and not having any lawful excuse allowed by the court, the resident magistrate shall impose upon him the same fine as is provided for such default in civil cases before the said court. Non-appearance of witness.

73. Where any person shall upon any court day appear before the said court to prefer any complaint against another who shall also appear thereto, and the said parties shall both be desirous of proceeding therein, the court may after the other business of the day has been concluded cause the complaint to be recorded; and may forthwith hear and determine the same or adjourn the hearing thereof to some following day if the same be necessary as the resident magistrate shall see fit. Summary determination of complaints.

74. On the day of hearing the court shall enquire of the accused his name and surname, and thereafter cause the charge or summons as the case may be to be read out to him and require him to plead thereto; and upon the plea being recorded the court shall enquire into such charge or complaint by hearing such witnesses as may be produced in support thereof, and in like manner shall hear any evidence offered on behalf of the defendant. If the accused shall refuse to plead, the court shall order a plea of "Not guilty" to be entered, and the trial shall proceed accordingly. Procedure at trial.

75. It shall be lawful for the accused before pleading to take any exception in law to the charge or summons. And the court shall thereupon proceed to decide such exception: If the exception be overruled the case shall proceed in the ordinary way: If the exception be allowed and the charge or summons dismissed the accused may be re-charged on a new complaint for the same offence. Accused may take exceptions before pleading to the charge.

* See also Ord. No. 15 of 1903, sec. 5.

Evidence as in civil cases. 76. All persons examined or giving evidence in the said court in criminal cases shall be examined and give evidence in the same manner and form as is provided in civil cases before the said court.

Order of addresses to court. 77. After the hearing of the evidence on both sides has been concluded the prosecutor may address the court on behalf of the prosecution, and thereafter the accused or his agent may address the court.

Record of judgments and sentences. 78. All the judgments and sentences shall be pronounced in open court, and recorded by the clerk of the court in the proper column of the Criminal Book.

Orders as to *corpora delicti*. 79. The court may, upon or after passing sentence, give a special order as to the return of the *corpora delicti* to the person thereto entitled or may order that the same are to be forfeited to the Crown.*

Noting in record book of higher degrees of punishment than prescribed by Proclamation. 80. If the sentence of the court be for any higher degree of punishment than is prescribed by the "Magistrates' Courts Proclamation, 1902", the clerk of the court shall also note in the last column of the Criminal Record Book the particular law authorizing the said punishment, and giving jurisdiction to the said court.

Discharge of accused in case of acquittal. 81. Any person acquitted upon any charge or complaint or where the same shall be dismissed for want of prosecution thereof, shall forthwith be discharged out of custody. And any person who shall once have been called upon to any charge, and who shall once have pleaded "Not guilty" thereto shall be entitled to demand that he either be acquitted or found guilty: provided, however, that the court may, after a case has been partially heard, adjourn the further hearing thereof until some future time, in case it should be made to appear by either the prosecutor or the party accused that some witness material to the case, and who without neglect or default of the party applying for the adjournment is not present will probably be present in case an adjournment be granted.

Committal to gaol of persons sentenced. 82. All persons sentenced by the court of the resident magistrate in any district to undergo the punishment of imprisonment shall be committed to the gaol of the said district for the purpose aforesaid by warrant under the hand of the said magistrate in the form following, that is to say:

Court of the Resident Magistrate,
District of.....

To the Gaoler or Keeper of His Majesty's Gaol
for the District of.....

Whereas the undermentioned prisoners were this day respectively and duly convicted before me of the several offences undermentioned, and were for the said offences sentenced by me to undergo the several punishments respectively affixed to their names; this is therefore to require you, in His Majesty's name, to receive the said several prisoners into your custody, and there safely keep them, until they shall have undergone the said punishment, or shall be otherwise lawfully discharged or removed therefrom.

<i>Prisoners' names.</i>	<i>Sentence.</i>	<i>Of what offence convicted.</i>
J.T.	One month's imprisonment with hard labour .. .. .	.. .. . Theft.
C.D.	Fined twenty shillings and to be imprisoned one week if fine is not paid .. .. .	.. .. . Assault.
E.F.	To be imprisoned one week and to receive private whipping of twenty-four lashes .. .. .	.. .. . Theft.
Given under my hand at....., this		
....., 19....		

.....
Resident Magistrate.

.....
Clerk of the Court.

Service of summons as in civil cases. 83. The service of all summonses in criminal cases in the said court shall be made by the messenger of the court or his lawful deputy in the same manner as is provided to be done in civil cases before the said court.

* As in *Gazette*; in Pr. 1900-1902 the word "court" is given.

* 84. An accused person wishing to appeal to the High Court of the Transvaal against any sentence in a criminal court pronounced against him by the court of any resident magistrate, shall proceed with his appeal within fourteen days after conviction by filing a written statement, setting out the grounds on which the appeal is based with the clerk of the court which has passed the sentence.

Appeal against conviction to Supreme Court.

85. The clerk of the court with whom such statement as aforesaid is filed, shall within three days after the receipt thereof transmit the same, together with the records of the case, to the Registrar of the High Court of the Transvaal. The appeal shall thereafter be heard on a day to be fixed by the said High Court of which due notice shall be given by the Registrar of the said High Court to the Legal Adviser to the Transvaal Administration and to the appellant or his attorney.

Notice to appeal and transmission of records.

MISCELLANEOUS.

86. The process of any such court for summoning any person, whether a party or as a witness, to appear before that court when holden at any place other than the ordinary, and stated place for holding of the same, may be issued by any person who shall be thereto appointed by the Governor by notice in the Gazette; and such process shall in substance correspond with the forms prescribed for process issued by the clerk of the court, and shall state the place where the said court is intended to be holden, and shall be directed to, and be executed by such person as the issuer of the process shall nominate and appoint, and such person so nominated and appointed shall have and possess in regard to the execution and return of such process the like powers and authorities, and be entitled to the like fees as the messenger of the said court would have possessed or been entitled to, had the same been directed to, and executed by, and returned by him, and such process shall at the foot be signed thus :

Form of process of court when held at other than ordinary place.

.....
duly authorized.

and the same need not be signed by either the resident magistrate or the clerk of the court.

87. All such process as in the last preceding section mentioned shall have the like force and effect in all respects as if the same had been directed to the officer appointed to execute ordinarily the process of the said court, and had been issued by the clerk of the said court: Provided always that nothing in this rule contained shall be construed so as to prevent the issue in common form by such clerk of any process for requiring the appearance of any person before the said court at any place where such court shall be appointed to be held.

Valuation of proceedings in such cases.

88. No person shall be summoned to appear as a party before any such court as aforesaid at any place other than the ordinary and stated place for the holding of the said court to answer any plaint or charge unless such person shall reside nearer to such place than to the ordinary and stated place aforesaid; and any summons issued in contravention of the provisions of this rule shall be null and void.

Such proceedings invalid unless parties reside nearer that place than to ordinary place.

89. Any act, which by any law or these rules is required to be done by the clerk of the court of resident magistrate may be done by such resident magistrate himself or by such clerk.

Resident magistrate may do what clerk of court may do.

* See Act No. 18, 1907, sec. 1.

* SCHEDULE "C".

A.D. 1902.]

Magistrates' Court.

[Proc. Tr. No. 21.]

CIVIL RECORD BOOK.				DISTRICT OF.....				
No.	Parties.	Nature of Plaintiff.	Day of Issuing Summons	Day of Appearance of Parties Personally or by whom.	Defence.	Day of Hearing the Case.	Judgment of the Court.	Subsequent Proceedings and Remarks.
1	William Adams against George Johnson.	Claim for house rent amounting to thirty-five pounds.		Plaintiff in person; defendant by his attorney, Richard Jones.	Debt denied.	•	For plaintiff, etc.	Warrant for execution issued.
2	Thomas Thompson against George Munro.	Claim for goods sold and delivered, twenty pounds.		Defendant in person; plaintiff made default.			Defendant absolved from the instance. Costs adjudged to defendant against plaintiff.	
3	John Andrews against William MacGregor.	Claim for delivery of a horse, or for payment of damages to the amount of fifty pounds.		Plaintiff by his attorney, Richard Jones; defendant by his agent, John Brown.	General denial	•	For plaintiff for delivery of the horse, or for twenty-five pounds as damages.	Appeal noted.

* Omitted in Proc. 1900-1902.

[656]

* SCHEDULE "D".

Proc. Tr. No. 21.]

Magistrates' Court.

[A.D. 1902.

CRIMINAL RECORD BOOK.				DISTRICT OF PRETORIA.				
Prosecutor.	Defendant.	Crime or Offence Charged.	Day of Commitment for Trial, and by whom.	Day of Lodging Complaint with the Clerk.	Day of Hearing.	Judgment.	Sentence.	Remarks.
1. Public Prosecutor	J. T., of....., in this district, labourer	Stealing at a coat, the property of A.B., of the same place, shopkeeper	19.. March 1 J. L., Esq.	19....	19.... March 20	Guilty	One month's imprisonment with hard labour	
[667] 2. Public Prosecutor	C.D., E.F., and G.H., of....., in this district, farmers	Violently assaulting and beating, at, A.B., of the same place, farmer	J. L., Esq. At large on bail	March 1	Same day	Guilty	Fined twenty shillings each	Discharged on the same day, having paid the fine.
3. A.B., of....., in this district, farmer	C.D., of....., in this district, shopkeeper	Assault at.....		March 20	Same day	Not guilty		
4. Public Prosecutor	Jacob, servant of A.B., of....., in this district, farmer	Stealing, at....., a sheep, the property of his master, on or about the 1st February, 19..	March 1 J. L., Esq.	March 20	April 20	Guilty	One month's imprisonment with hard labour	
5. C. D., labourer	E. F., Canteen-keeper	Selling wine at at unlawful hours		August 10	Sep. 10	Guilty	Fined £10, which, not being paid, defendant sentenced to one month's imprisonment with hard labour	Sentence founded on Ordinance No. of.....

* Omitted in Proc., 1900-1902.

SCHEDULE "E".

REPEALS.

LAW AND YEAR.	EXTENT OF REPEAL.	PAGE IN LOCAL LAWS
No. 1, 1874 ..	The whole	541
No. 6, 1885 ..	The whole	1371
No. 7, 1887 ..	The whole	128
No. 11, 1892 ..	The whole	444
Proclamation No. 6 of 1901	So much thereof as applies to courts of resident magistrate	(<i>Gazette</i>) 857
Proclamation No. 12 of 1901	Sections 1 and 2	(<i>Gazette</i>) 891
Transvaal Proclama- tion No. 31 of 1901	The whole	1663

†PROCLAMATION No. 22 OF 1902.

Proclamation
(Trans.) No.
22 of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR.

(Dated 10th April, 1902.)

TO ALTER AND AMEND THE LAW RELATING TO LETTERS PATENT
FOR INVENTIONS.

WHEREAS it is desirable to alter and amend the law relating to Letters Patent for Inventions :

Preamble.

Now, therefore, by virtue of the authority in me vested, I do hereby proclaim, declare and make known as follows :—

1. This Proclamation shall come into operation on the 1st day of May, 1902, and such date is hereinafter referred to as the commencement of this Proclamation.

Commence-
ment of
Proclamation.

2. Subject to the provisions of section *sixty* of this Proclamation Law No. 10 of 1898, and any other Law inconsistent with or repugnant to the provisions of this Proclamation shall be and are hereby repealed.

Repeal.

3. It shall be lawful for the Governor to appoint a Commissioner of Patents (hereinafter called the "Commissioner") whose office shall be called the "Patent Office", and shall be established at Pretoria.

Commissioner
of Patents.

4. There shall be a seal for the Patent Office and impressions thereof shall be judicially noticed and admitted in evidence.

Office at
Pretoria.Seal for
Patent Office.

5. Every person who is the true and first inventor or the legal representative of a true and first inventor of an invention, as hereinafter defined, may obtain, either alone or jointly with one or more person or persons, the exclusive right and privilege to make, use, exercise and sell the same within this Colony for his own benefit in such manner and for such period, and under such conditions as are hereinafter prescribed.

Inventor to
have exclusive
right to his
invention.

This right and privilege (hereinafter referred to as a patent) shall be granted by Letters Patent, to be issued by the Commissioner in manner hereinafter prescribed.

Letters Patent
to be issued.

**Save as provided by sections twenty-three and fifty-three respectively of this Proclamation* the expression "invention" means any new and useful art process machine manufacture or composition of matter or any new and useful improvement thereof capable of being used or applied in trade or industry and not known or used by others in this Colony and not patented or described in any printed publication in this Colony or any foreign country before the application for a patent in respect of the same and not in public use or on sale in this Colony or any foreign country for more than two years prior to such application unless the same is proved to have been abandoned.

Definition of
invention.

† See Trans. Proc. No. 29, 1902, and Act No. 28, 1907.

* Words in italics inserted by Trans. Proc. No. 29 of 1902, sec. 1, instead of after the word "Colony" when it first appears.

Form of application.

6. An application for a patent shall be as nearly as possible in the form given in Schedule "A" or in such other form as may from time to time be prescribed and addressed to the Commissioner.

An application for a patent must be signed by the applicant but all other communications between the applicant and the Commissioner and all attendances by the applicant before the Commissioner may be made by or through an attorney of the court or patent agent duly authorized to the satisfaction of the Commissioner.

Contents of application.

7. (1) An application for a patent must contain a declaration to the effect that the applicant is in possession of an invention whereof he or in the case of a joint application one or more of the applicants claims or claim to be or to be the legal representative of the true and first inventor or inventors and for which he or they desires or desire to obtain a patent; and must be accompanied by either a provisional or complete specification.

(2) Every application must contain an address in this Colony to which all notices requisitions and communications of every kind may be made.

Provisional specification.

(3) A provisional specification must describe the nature of the invention and be accompanied by drawings if required.

Complete specification.

(4) A complete specification whether left on application or subsequently must particularly describe and ascertain the nature of the invention and in what manner it is to be performed and must be accompanied by drawings if required.

(5) If a provisional specification is accompanied by drawings to the satisfaction of the Commissioner the complete specification need not be accompanied by drawings but may refer to the drawings accompanying such provisional specification.

(6) A specification whether provisional or complete must commence with the title and in the case of a complete specification must end with a distinct statement of the invention claimed.

Form of specification.

(7) As far as possible the provisional and complete specifications shall be in the form given in Schedules "B" and "C" and shall be in the English language.

Commissioner to examine application.

8. The Commissioner shall examine every application to ascertain whether the nature of the invention has been fairly described and the application specification and drawings if any have been prepared in the prescribed manner and the title sufficiently indicates the subject matter of the invention.

Commissioner may refuse to accept or require amendment of application.

9. (1) If the Commissioner on such examination finds that the nature of the invention is not fairly described or that the application specification* or drawings has not or have not been prepared in the prescribed manner or that the title does not sufficiently indicate the subject matter of the invention he may refuse to accept the application or require that the application specification or drawings be amended before he proceeds with the

* As in *Gazette*; but omitted in Proc. 1900-1902.

application; and in the latter case the application shall if the Commissioner so directs bear date as from the time the requirement is complied with.

(2) Where the Commissioner refuses to accept an application or requires an amendment the applicant may appeal from his decision to the Attorney-General.

* (3) The Attorney-General shall if required hear the applicant and the Commissioner and may make an order determining whether and subject to what conditions (if any) the application shall be accepted.

(4) The Commissioner shall when an application has been accepted give notice thereof to the applicant.

(5) If after an application for a patent has been made but before the patent thereon has been sealed another application for a patent is made accompanied by a specification bearing the same or a similar title the Commissioner may determine subject to an appeal to the *Attorney-General whether the invention comprised in both applications is the same and if so he may refuse to seal a patent on the application of the second applicant.

10. (1) The Commissioner shall keep at his office proper books and registers in which shall be entered the names of all patents which have been applied for together with the dates on which the applications and the provisional and complete specifications have been lodged with him.

(2) On payment of the amount mentioned in Schedule "H" the Commissioner shall give a receipt to the applicant or his attorney proving that such entries have been made.

(3) Where an application for a patent in respect of an invention has been accepted the invention may during the period between the date of the application and the date of sealing such patent be used and published without prejudice to the patent to be granted for the same and such protection from the consequences of use and publication is in this Proclamation referred to as provisional protection.

(4) No one but the Commissioner or someone acting on his behalf shall be allowed to inspect any specification until the advertisement mentioned in section *thirteen* has been published.

11. (1) If an applicant supplies only a provisional specification with his application he shall be obliged to send in a complete specification within nine months from the date of his application; and if he fails to do so he shall be considered to have abandoned his application. The applicant may however within such period of nine months notify to the Commissioner that he desires his provisional specification to be regarded as a complete specification and if such provisional specification complies with the conditions hereinbefore provided with reference to complete specifications to the satisfaction of the Commissioner subject to appeal to the *Attorney-General the same shall be treated as a complete specification.

* See Patents (Amendment) Proclamation (Trans. No. 29 of 1902, sec. 5) as to the power of the Attorney-General on such appeals to examine witnesses upon oath, and to administer oaths for that purpose: and sec. 6 as to his power to make, alter, and rescind rules regulating such appeals, and the practice and procedure before him, and to making orders as to costs.

Appeal to
Attorney-
General.

Who shall
hear parties.

Notice of
acceptance of
application.
Second
application
for same
invention.

Commissioner
to keep books
and registers.

And give
receipts for
payments.

Provisional
protection.

No inspection
of specifica-
tions until ad-
vertisement.

Complete
specification
to be sent in
within nine
months of
date of
application.

Effect of acceptance of complete specification.

(2) After a complete specification shall have been accepted by the Commissioner or after a provisional specification shall have been accepted as a complete specification as hereinbefore provided and until such time as the patent shall be sealed or until the period shall have elapsed within which such sealing must take place the applicant shall enjoy the same rights and privileges as if a patent had been granted to him for his invention on the date of the acceptance of such complete specification; provided that an applicant shall not be entitled to institute any proceedings for infringement until a patent for the invention has been granted to him.

Commissioner must compare provisional and complete specifications.

12. (1) Where a complete specification is left after a provisional specification the Commissioner shall examine both the provisional and complete specifications for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner and whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification.

And may refuse or accept the complete specification.

(2) If the Commissioner finds that the conditions hereinbefore contained have not been complied with, he may refuse to accept the complete specification, unless and until the same shall have been amended to his satisfaction; but any such refusal shall be subject to appeal to the Attorney-General.

Right of appeal to Attorney-General.

*(3) The Attorney-General shall, if required, hear the applicant and the Commissioner, and may make an order determining whether and subject to what conditions, if any, the complete specification shall be accepted.

If complete specification not accepted within twelve months of application it becomes void.

(4) Unless a complete specification is accepted within twelve months from the date of application, then (save in the case of appeal having been lodged against the refusal to accept) the application shall at the expiration of those twelve months become void; provided always that the Commissioner may extend the said period of twelve months by a period not exceeding three months on payment of the prescribed fee.

On acceptance applicant to publish notice in *Gazette*.

13. On the acceptance of the complete specification the Commissioner shall issue a notice to the applicant to that effect, which the applicant shall forthwith advertise in three issues of the *Gazette*, and in such other newspaper or newspapers as the Commissioner may require, and thereupon the application and specification or specifications with the drawings, if any, shall be open to public inspection. The applicant shall, within the period mentioned in the next succeeding section file with the Commissioner a copy of the *Gazette* in which the notice of the acceptance of the specification aforesaid has been published.

Opposition to grant of patent.

14. (1) Any person may at any time within two months from the date of the latest advertisement of the acceptance of a complete specification, give notice in writing at the Patent Office of objection to the grant of a patent on any one or more of the following grounds:—

* See Patents (Amendment) Proclamation (Trans. No. 29 of 1902, sec. 5) as to power of Attorney-General on such appeals to examine witnesses upon oath, and to administer oaths for that purpose; and sec. 6 as to his power to make, alter, and rescind rules regulating such appeals, and the practice and procedure before him, and to making orders as to costs.

- (a) That the invention has been fraudulently obtained to the prejudice of another's rights ;
- (b) that the person represented as being the true and first inventor is not such ;
- (c) that the invention is not new ;
- (d) that the invention is not capable of being patented in terms of section *five* of this Proclamation ;
- (e) that the complete specification, or the provisional specification accepted as such, as hereinbefore provided, has reference to the theoretical principles, hypotheses, methods, systems, discoveries or conceptions, the manner of applying or using which is not set out ;
- (f) that the complete specification, or the provisional specification accepted as such, as hereinbefore provided, is not sufficient, *i.e.*, that mention of a part of the invention has been omitted, or that it has been insufficiently explained ;
- (g) that the invention or the application of the same, is contrary to law, public order, or good morals ;
- (h) that the title of the invention fraudulently sets forth another than the true subject matter of the invention ;
- (i) that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the objector in the interval between the leaving of the provisional and the leaving of the complete specification.

(2) A notice of opposition to the grant of a patent shall be in the form given in Schedule " D ", and shall state the ground or grounds on which the person giving such notice (hereinafter referred to as the objector) intends to oppose the grant, and must be signed by him. Such notice shall state his address for service in this Colony.

Form of notice of opposition.

* (3) The Commissioner shall give notice to the applicant of the objection to his application and the grounds on which it is based.

Commissioner to give notice of objections to applicant.

† (4) *After the Commissioner shall have given such notice of objection as aforesaid he shall forthwith transmit to the Registrar of the Supreme Court all documents relating to the application and to the opposition thereto.*

† (5) *The Registrar of the Supreme Court shall give notice to the applicant and every objector of the place where and the date and hour when the application and the objections thereto will be heard.*

† (6) *If an objector or the applicant is residing abroad or has no fixed property in this Colony the applicant or an objector may prior to the hearing of the objection or application (as the case may be) apply to a judge of the Supreme Court for an order that security to the satisfaction of such judge be lodged or given by the objector or applicant for the costs of the application or objection and until such security is lodged or given the objection or application (as the case may be) shall not be heard.*

* As amended by Act No. 28 of 1907, sec. 1 (a).

† Sub-secs. (4), (5), and (6) added by Act No. 28 of 1907, sec. 1 (b).

Hearing of
application
by Court.

*15. (1) *At the time and place notified as aforesaid a judge of the Supreme Court shall subject to the provisions of sub-section (6) of the last preceding section hear the applicant and any objectors to the application and such evidence as may be tendered by any of them and shall determine whether and in what form the application shall be granted.*

(2) *The application and notice of opposition together with the documents transmitted therewith to the Registrar as aforesaid shall be treated in proceedings under this section as if the same were pleadings in a civil action and for the purpose of hearing and determining the matter before him the judge shall have all such powers and jurisdictions as are possessed by a judge sitting as a divisional court and may further call in the assistance of experts and other persons and may decide what remuneration (if any) shall be paid to them for their assistance by the applicant or any objector.*

Any judgment, decree, or order made in proceedings under this section shall be subject to appeal in the same manner and on the same conditions as a judgment, decree, or order of a divisional court; provided that the provisions of sub-section (6) of the last preceding section shall mutatis mutandis apply in respect of the hearing of such appeal.

(3) *As soon as it shall have been determined whether the application for a patent be granted or not the Registrar of the Supreme Court shall notify to the Commissioner the judgment, decree, or order made thereon, and the Commissioner shall thereupon cause entry to be made in his registers of all such particulars of the same and proceedings thereon as he is by law required to make.*

†(4) *The judges of the Supreme Court may from time to time make, alter, or rescind such rules, orders, and regulations as to them shall seem meet concerning matters relating to practice and procedure on opposition to the grant of a patent.*

Sealing of
patent.

16. *If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, the Commissioner shall cause a patent to be sealed with the seal of the Patent Office, and a patent so sealed shall have the same effect as if it were sealed with the seal of the Governor.*

17. *The issue of a patent for an invention, the use of which is contrary to law, public order, or good morals, may be refused.*

18. *The sealing of a patent shall take place as soon as possible, but not later than fifteen months after the date of the application, except in the following instances:—*

(a) *In case the sealing is delayed on account of an appeal or on account of objections being lodged against the granting of the patent, the sealing may take place at such time as the Commissioner shall determine;*

(b) *in case the applicant dies before the expiration of the period of fifteen months aforesaid, the letters patent may be granted to his legal representative and may be sealed at any time within twelve months after the decease of the applicant.*

* Sec. 15 substituted by Act No. 28 of 1907, sec. 2.

† For rules see footnote to sec. 61.

When a
patent may
be refused.
Time within
which a
patent is to
be sealed.

Provided always that where an extension of time is allowed by the Commissioner for the acceptance of a complete specification under sub-section (4) of section *twelve* of this Proclamation, the Commissioner shall allow an extension of a period not exceeding four months after the said fifteen months for the sealing of the letters patent.

19. Every patent granted under this Proclamation shall be drawn up as nearly as possible in the form given in Schedule "E", and shall be dated and sealed as of the day of the application. Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification. Provided also that in case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application.

20. Where an application for a patent has been abandoned or become void before the publication of the complete specification, the specification or specifications and drawings (if any) accompanying or left in connection with such application shall not at any time be open to public inspection or be published by the Commissioner.

21. (1) The term limited in every patent for the duration thereof shall be fourteen years from its date.

(2) But every patent shall, notwithstanding anything therein or in this Proclamation, cease if the patentee fails to make the payments prescribed in Schedule "H" within the prescribed times.

(3) If, nevertheless, in any case by accident, mistake, or inadvertence, a patentee fails to make any prescribed payment within the prescribed time, he may apply to the Commissioner for an enlargement of time for making the payment.

(4) Thereupon the Commissioner shall, if satisfied that the failure has arisen from any of the above-mentioned causes, on receipt of the prescribed fee for enlargement, enlarge the time accordingly for such period as he shall think just, subject only that if any proceeding shall be taken in respect of an infringement of the patent, committed after a failure to make any payment within the prescribed time and before the enlargement thereof, the court, before which the proceeding is proposed to be taken, may, if it shall think fit, refuse to award or give any damages in respect of such infringement.

22. If a patent has been lost or destroyed, or if it has been provided to the satisfaction of the Commissioner that the document cannot be produced, a duplicate may be issued on a sworn declaration to that effect being made, after four publications during three months in the *Gazette* and such other newspaper or newspapers as the Commissioner may direct, and on payment of the fee prescribed by Schedule "H".

23. (1) The grant of a patent or similar exclusive privilege for an invention in a foreign country to any person, shall not be a bar to the grant of a patent for the same invention, or any part thereof, in this Colony to the same person, provided that

the application for the grant of a patent in this Colony shall be made within twelve months of the date of the grant of such foreign patent, or similar exclusive privilege.

(2) The publication in this Colony, or *any foreign country*,* during the aforesaid period of any description of the invention or the use therein during such period of the invention, shall not invalidate the patent which may be granted for the invention in this Colony.

Specifications
to be in
custody of
Commis-
sioner.
Amendment
of
specification.

24. All specifications, with the drawings if any, appertaining thereto deposited at the office of the Commissioner in manner aforesaid shall remain in his custody at the Patent Office.

25. (1) An applicant or a patentee may from time to time, by request in writing left at the Patent Office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of such amendment and his reasons for the same.

(2) The request and the nature of such proposed amendment shall be advertised by publication in the *Gazette* and such other newspaper or newspapers as the Commissioner may require, in the form prescribed by Schedule "F" to this Proclamation, and at any time within three months from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(3) Where such notice is given, the Commissioner shall give notice of the opposition to the person making the request and shall hear and decide the case, subject to an appeal to the Attorney-General.

†(4) The Attorney-General shall, if required, hear the person making the request and the person so giving notice and being in the opinion of the Attorney-General entitled to be heard in opposition to the request, and shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(5) When no notice of opposition is given, or the person so giving notice does not appear, the Commissioner shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

†(6) When leave to amend is refused by the Commissioner the person making the request may appeal from his decision to the Attorney-General.

(7) The Attorney-General shall, if required, hear the person making the request and the Commissioner, and may make an order determining whether and subject to what conditions, if any, the amendment ought to be allowed.

* Words in italics were inserted by Trans. Proc. No. 29 of 1902, sec. 2.

† See Patents (Amendment) Proclamation (Trans. No. 29 of 1902) as to the power of the Attorney-General on such appeals to examine witnesses upon oath and to administer oaths for that purpose; also sec. 6 as to his power to make, alter, and rescind rules regulating such appeals, and the practice and procedure before him, and to make orders as to costs.

(8) No amendment shall be allowed that would make the specification as amended claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before the amendment.

(9) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed except in case of fraud; and the amendment shall in all courts and for all purposes be deemed to form part of the specification.

(10) The foregoing provisions of this section do not apply when and so long as any action for infringement or proceeding for revocation of a patent is pending.

26. In any action for infringement of a patent and in a proceeding for revocation of a patent the court or a judge in chambers may at any time order that the patentee shall, subject to such terms as to costs and otherwise as the court or a judge in chambers may impose, be at liberty to apply at the Patent Office for leave to amend his specification by way of disclaimer, and may direct that in the meantime the trial or hearing of the action shall be postponed.

Power to disclaim part of invention during action.

27. Where an amendment by way of disclaimer, correction, or explanation has been allowed under this Proclamation, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction or explanation, unless the patentee establishes to the satisfaction of the court that his original claim was framed in good faith and with reasonable skill and knowledge.

Restriction on recovery of damages.

28. Every amendment of a specification shall be advertised in manner prescribed by the Commissioner.

Advertisement of amendment.

29. If on the petition of an interested party it is proved to the satisfaction of the Governor that in consequence of the refusal of a patentee to grant licences to use his invention on reasonable terms

Power of Governor to order grant of licences.

(a) the patent is not being made use of in this Colony; or
 (b) the reasonable demands of the public in connection with the invention cannot be met; or
 (c) anyone is prevented from making use of or deriving the full benefit from an invention of which he is possessed
 the Governor may order the patentee to grant licences for the use of the said invention under such conditions as to the amount of royalties, security for payment, or otherwise as the Governor, regard being had to the nature of the invention and the circumstances of the case, may deem just, and any such order may be made an order of the court.

30. There shall be paid to the Commissioner in respect of the several instruments described in Schedule "H" to this Proclamation the fees in that schedule mentioned, and there shall likewise be paid in respect of any other matters under this Proclamation such fees as may from time to time be prescribed by the Commissioner with the consent of the Governor.

Fees in schedule.

31. (1) Every patentee may address an application to the Governor asking for an extension of the terms of his patent. Such an application must be sent in at least six months previous to the expiration of such term.

Extension of term of patent on application to Governor.

(2) The Governor shall refer such application to the High Court of the Transvaal for consideration and report.

(3) The court shall on such reference being made by the Governor appoint a day for hearing such application, and, at least two months before the day appointed for such hearing, the applicant shall publish, in manner prescribed by the court, a notice of the contents of his application as nearly as possible in the form prescribed in Schedule "G".

(4) Everyone interested in making objection to the application may lodge his objections in writing with the Registrar of the Court; provided that such be done at least one month before the day appointed for the hearing of the application.

(5) The applicant and everyone who has lodged any objection in writing in the manner prescribed by law may appear in person or by counsel to plead his case.

(6) The court in its report shall take into consideration the nature and the merits of the invention and the value thereof to the public, the profit derived therefrom by the patentee, and the further circumstances of the case. The report shall further state whether in the opinion of the court it is advisable to grant an extension, and, if so, for how long and under what conditions or restrictions. The court shall further direct by whom the costs of the case between the parties shall be borne, and an order as to the costs made or granted by the court may be legally enforced.

Governor may grant extension of patent.

32. The Governor shall have the right, after considering the application for an extension and the report of the said court thereon, to grant an extension of the term of the patent under such conditions and restrictions and for such a length of time (in no case longer than fourteen years) as he may think desirable. The extension of the term of the patent shall date from the day of the expiration of the original term thereof.

Register of Patents.

33. (1) There shall be kept at the Patent Office a register called "The Register of Patents", wherein shall be entered the dates of applications for patents, the names and addresses of grantees of patents, notifications of assignments and transfers, and of transmission of patents, of licences under patents, and of amendments, extensions and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed, provided that there shall not be entered in the register, or be receivable by the Commissioner, any notice of any trust express, implied or constructive.

(2) The Register of Patents shall at all convenient times be open to the inspection of the public on payment of the fee prescribed in Schedule "H".

(3) Any person may, on payment of the fee prescribed in Schedule "H", obtain a certified copy or extract from the Register of Patents, sealed with the Seal of the Patent Office.

(4) The Register of Patents shall be *primâ facie* evidence of any matters by this Proclamation directed or authorized to be inserted therein.

(5) Copies of deeds, licences and any other document affecting the proprietorship of any patent, or in any licence thereunder, must be supplied to the Commissioner in the prescribed manner for filing in the Patent Office.

34. Printed or written copies or extracts, purporting to be certified by the Commissioner and sealed with the seal of the Patent Office, of or from patents, specifications and other documents in the Patent Office, and of or* from registers and other books kept there, shall be admitted in evidence in all courts in this Colony and in all proceedings without further proof or production of the originals.

Proof of patents, specifications, etc.

35. Any person who makes, or causes to be made, a false entry in a register kept in terms of this Proclamation, or produces or tenders or causes to be produced or tendered in evidence any such false entry or false copy or extract, knowing the same to be false, shall be punished with imprisonment, with or without hard labour, for a period not exceeding five years.

Penalty for making false entry.

36. (1) The court may, on application by any person who complains of an unjustifiable entry or unjustifiable omission of an entry, or of any other particulars in such register, make such order for the striking out, insertion, or amendment of such entry as the court shall deem necessary; the court may also dismiss the application, and make an order as to costs in either case.

Register may be amended on order of court.

(2) The court may, in any proceeding under this section, decide any question that it may be necessary or expedient to decide for the rectification of a register, may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3) Any order of the court rectifying a register shall direct that due notice of the rectification be given to the Commissioner.

37. The Commissioner may, on request in writing, accompanied by the fee prescribed in Schedule "H"

Correction of clerical errors.

(a) correct any clerical error in, or in connection with, an application for a patent; or

(b) correct any clerical error in the name, style, or address of the registered proprietor of a patent, or any licence thereunder.

38. An application may be made to the court by petition for the revocation of a patent on one or more of the following grounds:—

Revocation of patent.

(a) That the patent has been fraudulently obtained to the prejudice of another's rights;

(b) that the person represented as being the true and first inventor was not such;

(c) that the invention was not new;

(d) that the invention is not capable of being patented in terms of section five of this Proclamation;

(e) that the complete specification, or the provisional specification accepted as such, as hereinbefore provided, has

* As in *Gazette*; in Proc. 1900-1902, the word "and" is given.

reference to theoretical principles, hypotheses, methods, systems, discoveries or conceptions, the manner of applying or using which is not set out ;

(f) that the complete specification, or the provisional specification accepted as such, as hereinbefore provided, is not sufficient, *i.e.*, that mention of a part of the invention has been omitted,* or that it has been insufficiently explained ;

(g) that the invention, or the application of the same, is contrary to law, public order, or good morals ;

(h) that the title of the invention fraudulently sets forth another than the true subject matter of the invention ;

(i) that the prescribed payments have not been duly made.

Who may
apply for
revocation.

39. A petition for revocation of a patent may be presented by the following persons only, that is to say,

(a) the Attorney-General ;

(b) any person expressly authorized thereto by the Attorney-General ;

(c) any person who alleges that the patent has been obtained in fraud of his rights, or of the rights of any person under or through whom he claims ;

(d) any person who alleges that he or any person under or through whom he claims was the true inventor of any invention included in the claim of the patentee ;

(e) any person who alleges that he, his partner, or any person under or through whom he claims had publicly manufactured, used, or sold before the date of the patent, anything which the patentee claims as his invention.

Procedure in
petition for
revocation.

40. In a proceeding for the revocation of a patent the following provisions shall be observed :—

(1) The plaintiff must deliver with his petition particulars of the objections on which he means to rely, and if one of such objections is “ want of novelty ” he must state the time and place of the alleged previous publication or user, and if such publication is to be found in books, papers, or other documents, copies or extracts of the same, stating the title, edition, place, and date of publication or compilation thereof, shall be annexed to the particulars. No evidence shall, except by leave of the court or a judge in chambers, be admitted in proof of any objection of which particulars are not so delivered.

(2) Particulars delivered may be from time to time amended by leave of the court or a judge in chambers.

(3) The defendant shall have the right to begin and give evidence in support of his patent, and if the plaintiff produces evidence against the validity of the patent the defendant shall be allowed to bring rebutting evidence.

On revocation
of patent on
ground of
fraud the true
inventor may
obtain a new
patent.

41. Where a patent has been revoked on the ground of fraud the Commissioner may, on the application of the true inventor made in terms of this Proclamation issue to him a new patent (in place of the revoked one), the date of which shall be the date of

* In Proc. 1900-1902, the words “ or that it has been omitted ” appear here, but are not in the *Gazette*.

revocation of the patent so revoked. This new patent shall, however, cease on the expiration† of the term for which the revoked one was granted.

42. (1) Any person who represents that any article sold by him is a patented article when no patent or similar exclusive privilege has been granted for the same shall be liable for every offence to a fine not exceeding one hundred pounds sterling, or to imprisonment with or without hard labour for a term not exceeding three months.

Penalty on falsely representing articles to be patented.

(2) A person shall be deemed for the purposes of this Proclamation to represent that an article is patented if he sells the article with the word "patent" or "patented", or any word or words expressing or implying that a patent or similar exclusive privilege has been obtained for the article stamped, engraved or impressed on or otherwise applied to the article.

43. Subject to the provisions of sub-section (2) of section eleven of this Proclamation an action for an infringement of a patent may be instituted in the court by a patentee against any one who after the publication of the complete specification exercises, sells, makes use of, applies, imitates, or copies the invention in question without the consent or licence of the patentee. Every ground on which a patent may be revoked shall be available by way of defence to an action for the infringement of a patent.

Actions for infringement of patent.

44. (1) In an action for infringement of a patent the plaintiff must deliver with his statement of claim, or by order of the court or a judge in chambers at any subsequent time, particulars of the breaches complained of.

Procedure therein.

(2) The defendant must deliver with his statement of defence, or by order of the court or a judge in chambers at any subsequent time, particulars of any objections on which he relies in support thereof.

(3) If the defendant disputes the validity of the patent the particulars delivered by him must state on what grounds he disputes it, and if one of those grounds is "want of novelty" must state the time and place of the previous publication or user alleged by him; and if the publication is to be found in books, papers, or other documents, copies or extracts of the same stating the title, edition, place and date of publication or compilation thereof, shall be annexed to the particulars of objections.

(4) At the hearing no evidence shall, except by leave of the court, be admitted in proof of an alleged infringement or objection of which particulars are not so delivered.

(5) Particulars delivered may be from time to time amended by leave of the court or a judge in chambers.

(6) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively shall not be allowed any costs in respect of any particular delivered by them, unless the same is certified by the court to have been proven or to have been reasonable and proper without regard to the general costs of the case.

† As in *Gazette*; in Proc. 1900-1902, the word "revocation" is given.

Court may call in experts.

45. In an action or proceeding for infringement or revocation of a patent the court may, of its own accord, or at the request of one or both of the parties, call in the services of an expert, with whose assistance the whole case or a part thereof shall be dealt with and decided. The remuneration of such expert shall be fixed by the court.

Order for suspension, inspection, etc.

46. In an action for infringement of a patent the court may on application of one of the parties order the suspension or cessation of work, the production, furnishing or keeping of accounts, or the holding of an inspection, and may impose such terms and give such directions respecting the same and the proceedings thereon as the court may see fit.

Certificate of validity questioned and costs thereon.

47. In an action for infringement of a patent the court may certify that the validity of the patent came in question; and if the court so certifies then in any subsequent action for infringement the plaintiff in that action on obtaining a final order or judgment in his favour shall have his full costs, charges and expenses as between attorney and client, unless the court trying the action certifies that he ought not to have the same.

Remedy in case of groundless threats of legal proceedings.

48. Where any person claiming to be the patentee of an invention by circulars, advertisements or otherwise threatens any other person with legal proceedings or liability in respect of any alleged manufacture, use, sale or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and may obtain an interdict against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby if the alleged manufacture, use, sale or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

Patent for one invention only.

49. Every patent shall be granted for one invention only, but may contain more than one claim provided that no one shall be entitled to object to a patent on the ground that it embraces more than one invention.

Application for patent by representative of deceased inventor.

50. (1) If a person possessed of an invention dies without making application for a patent for the invention, application may be made by and a patent for the invention granted to his legal representative.

(2) Every such application must be made within twelve months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to be the true and first inventor of the invention.

Patent to first inventor not invalidated by application in fraud of him.

51. A patent granted to the true and first inventor shall not become ineffective or void by reason of an application for letters patent being made in fraud of him or by reason of provisional protection being obtained thereupon, or by reason of the use or publication of such invention after the filing of the application during the period of provisional protection.

Transfer for particular places.

52. A patentee may transfer to another person his patent for any place in or for any part of this Colony as effectually as if the patent had been granted only for such a place in or such

part of this Colony ; but no transfer or cession of a patent or part of a patent shall be legal unless such transfer or cession be made by means of a notarial deed and duly registered at the office of the Commissioner.

53. The exhibition of an invention at an international or industrial exhibition, or the publication of a description of the invention during the time of any such exhibition, or the use of the invention for purposes of the exhibition at the place where it is held, or the use of the invention during the time of the exhibition at another place by someone not authorized thereto by the inventor shall not prejudice the right of the inventor or his legal representative to apply for and obtain provisional protection and a patent for his invention, and shall not affect the validity of the patent obtained on such application ; provided always that the following two conditions are observed :—

(a) The exhibitor shall previous to exhibiting his invention inform the Commissioner in writing of his intention so to do.

(b) The application for a patent must be made within six months from the opening of the exhibition.

54. The Governor may demand from a patentee at any time a model of his invention on payment of the costs of making the same, the amount of which in case of dispute shall be fixed by arbitrators. The destination of such models shall be determined by the Governor.

55. If any one is unable by reason of tender age or weakness of mind or other incapacity to make a declaration or perform an act required or permitted by this Proclamation, or by any rules made under it, then his guardians or curators, or failing these a person appointed by the court on the application of any one on behalf of such person, or on the application of any one interested in the making such declaration, or performing such act, may make such a declaration or one as near as possible to the one prescribed, or do such act in the name and on behalf of such aforesaid person. All acts done by such representative shall for the purposes of this Proclamation be as effectual as if done by the person so represented.

56. Where any discretionary power is by this Proclamation given to the Commissioner he shall not exercise that power adversely to the applicant for a patent or for amendment of a specification without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his attorney or patent agent.

57. (1) A patent shall have to all intents the like effect as against His Majesty the King, his heirs and successors, as it has against a subject.

(2) But the officers or authorities administering any department of the service of His Majesty in his Colonial Government may by themselves, their agents, contractors or others, at any time after the application use the invention for the services of the Crown on terms to be before or after the use thereof agreed on, with the approval of the Comptroller of the Treasury, between those offices or authorities and the patentee, or in default of such agreement on such terms as may be settled by the Comptroller of the Treasury after hearing all parties interested.

Exhibition at industrial exhibition not to prejudice patent rights.

Governor may demand models.

Representatives may act for infants, etc.

Exercise of discretionary power by Commissioner.

Patent to bind Crown.

Assignment
to Secretary
for War of
certain
inventions.

58. (1) The inventor of any improvement in instruments or munitions of war, his heirs, executors or assigns (who are in this section comprised in the expression "the inventor") may (either for or without valuable consideration) assign to such person as may be approved of by His Majesty's Principal Secretary of State for the War Department on behalf of His Majesty, all the benefit of the invention, and of any patent obtained or to be obtained for the same; and the person so approved of by the said Secretary of State may be a party to the assignment.

(2) The assignment shall effectually vest the benefit of the invention and patent in the said Secretary of State for the time being on behalf of His Majesty, and all covenants and agreements therein contained for keeping the invention secret, and otherwise, shall be valid and effectual (notwithstanding any want of valuable consideration), and may be enforced accordingly by the said Secretary of State for the time being.

(3) Where any such assignment has been made to the person so approved of by the said Secretary of State as aforesaid, the said Secretary of State or such person as aforesaid may, at any time before the application for a patent for the invention, or before publication of the specification or specifications, certify to the Commissioner his opinion that in the interest of the public service the particulars of the invention, and of the manner in which it is to be performed, should be kept secret.

(4) If the said Secretary of State or such person as aforesaid so certifies the application and* specification or specifications with the drawings (if any), and any amendment of the specification or specifications, and any copies of such documents and drawings, shall instead of being left in the ordinary manner at the patent office be delivered to the Commissioner in a packet sealed by authority of the said Secretary of State or such person as aforesaid.

(5) Such packet shall, until the expiration of the term or extended term during which a patent for the invention may be in force, be kept sealed by the Commissioner, and shall not be opened save under the authority of an order of the said Secretary of State or such person as aforesaid, or of the Attorney-General.

(6) Such sealed packet shall be delivered at any time during the continuance of the patent to any person authorized by writing under the hand of the said Secretary of State, or such person as

(7) On the expiration of the term or extended term of the patent such sealed packet shall be delivered to any person authorized by writing under the hand of the Secretary of State or such person as aforesaid to receive it.

(8) Where the Secretary of State or such person as aforesaid certifies as before mentioned after an application for a patent has been left at the patent office, but before the publication of the specifications, the application, specification or specifications with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the Commissioner, and such packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Secretary of State.

* As in *Gazette*; in Proc. 1900-1902, the word "any" is given.

(9) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which the Secretary of State or such person as aforesaid has certified as before mentioned.

(10) No copy of any specification or other document or drawing by this section required to be placed in a sealed packet shall in any manner whatever be published or open to the inspection of the public, but save as in this section otherwise directed the provisions of this Proclamation shall apply in respect of any such invention and patent as aforesaid.

(11) The Secretary of State or such person as aforesaid may at any time by writing under his hand waive the benefit of this section with respect to any particular invention, and the specifications, documents, and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12) The communication of any invention for any improvement in instruments or munitions of war to the Secretary of State, or to such person as aforesaid, or to any person or persons authorized by the Secretary of State, or such person as aforesaid to investigate the same or the merits thereof shall not, nor shall anything done for the purposes of the investigation be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

59. (1) After the first day of August, 1902, a person shall not be entitled to describe himself as a patent agent, whether by advertisement, by description on his place of business, by any document issued by him, or otherwise, unless he is registered as a patent agent, in pursuance of this Proclamation, or any rules to be made hereunder.

Register of
patent agents.

(2) Provided that every person who proves to the satisfaction of the Attorney-General that prior to the 11th day of October, 1899, he had been bona fide practising as a patent agent, shall be entitled to be registered as a patent agent in pursuance of this Proclamation.

(3) If any person knowingly describes himself as a patent agent in contravention of this section, he shall be liable to a fine not exceeding fifty pounds, to be imposed by a court of resident magistrate.

60. This Proclamation shall extend to all letters patent granted before the commencement of this Proclamation (except as to fees, which became due for renewals of such letters patent before the commencement of this Proclamation), and to all applications then pending in substitution for such enactments as would have applied thereto if this Proclamation had not been issued; provided always

Application of
Proclamation.

(1) that any fees for renewals of patents granted prior to the commencement of this Proclamation, which became due between the 11th day of July, 1899, and such commencement may be paid within six months of the commencement of this Proclamation, and such payments shall be deemed and taken to be made within the period prescribed by law;

(2) that all applications for patents pending at the commencement of this Proclamation shall, save as hereinafter

mentioned, be treated for the purposes of this Proclamation as if the same had been filed with the Commissioner on the day of the commencement of this Proclamation ;

(3) that any question of priority between any two or more applicants whose applications were pending at the commencement of this Proclamation shall be determined in accordance with the dates on which such applications were originally filed ;

(4) that in the event of a patent being granted on any such application as aforesaid, the date of such patent shall be the date on which such application was originally filed.

**Provided always that the term limited for the duration of every patent granted on any such application shall be fourteen years, together with such period as is equivalent to the period between the date when any such application was filed and the commencement of this Proclamation ;*

(5) that the use or publication of any invention in respect of which an application for a patent was pending at the commencement of this Proclamation, before the acceptance of such application or the complete specification in respect thereof, as the case may be, under this Proclamation, shall be without prejudice to the patent (if any) to be granted for the same ; provided that such use or publication took place on or subsequent to the date on which such application was originally filed ;

(6) applications for patents pending at the commencement of this Proclamation shall not include any applications which lapsed or became abandoned under the provisions of Law No. 10 of 1898, prior to the 11th day of July, 1899 ;

†(7) *the renewal fees payable in respect of any patents granted prior to the coming into operation of Law No. 10 of 1898 shall be the renewal fees prescribed by Law No. 6 of 1887.*

Governor may
make rules.

‡61. It shall be lawful for the Commissioner, with the consent of the Governor, from time to time to alter the forms in the schedules to this Proclamation and to make rules or prescribe forms subject to the provisions of this Proclamation for regulating the business of the patent office the publication of advertisements, the licensing, suspension, and qualification of patent agents, and all other matters or things by this Proclamation placed under the direction or control of the Commissioner.

Acting Com-
missioner.

62. It shall be lawful for the Governor, during the absence from his office of the Commissioner through illness, leave, or absence on duty, to appoint some fit and proper person to act for and on behalf of such Commissioner, and the person so acting shall have and exercise all the powers, duties, and privileges conferred by this Proclamation on the Commissioner.

* Words in italics added by Trans. Proc. No. 29 of 1902, sec. 3.

† Sub-sec. (7) added by Trans. Proc. No. 29 of 1902, sec. 4.

‡ Such rules were made and published under Govt. Notice No. 179 of 1902 (*Gazette*, 9th May, 1902, p. 624), Govt. Notice No. 964, 1909 (*Gazette*, 20th August, 1909). For rules as to registration of patent agents see Govt. Notice No. 1280 of 1903 (*Gazette*, 6th November, 1903, p. 1165).

63. In and for the purposes of this Proclamation, unless the context otherwise requires :— Definition.

“Governor” means the officer for the time being administering the government of the Transvaal.

“Court” means the High Court of the Transvaal, or the Witwatersrand District Court, as the case may be.

“Attorney-General” includes the legal adviser to the Transvaal Administration.

“Foreign” country” means any country, Colony, or State other than this Colony, and whether a British possession or not.

“Patentee” means the person for the time being entitled to the benefit of a patent.

“Person” means and includes corporation.

“Legal representative” means the heirs or executors of any deceased person.

“Patent agent” means an agent for obtaining patents in this Colony.

64. This Proclamation may be cited as “The Patents Proclamation, 1902 ”. Short title.

SCHEDULE “ A ”.

..... (fill in name and address of the applicant or applicants) by profession, hereby declare that....., in possession of an invention entitled (here insert title of invention) that the true and first inventor thereof, and that the same is not in use by any other person or persons to the best of knowledge and belief: And humbly pray that a patent be granted to for the said invention. Dated this..... day of, 19....

..... (Signature of the applicant or applicants.)

SCHEDULE “ B ”.

(TITLE OF INVENTION.)

..... (name and address of applicant or applicants) do hereby declare the nature of this invention to be as follows : (Short description.)

Dated this..... day of, 19....

..... (Signature of the applicant or applicants or their attorneys or patent agents.)

SCHEDULE “ C ”.

(TITLE OF INVENTION.)

..... (name and address), by profession, do hereby declare the nature of this invention and in what manner the same is to be performed to be particularly described and ascertained in and by the following statement (here insert full description of invention). Having now particularly described and ascertained the nature of said invention, and in what manner the same is to be performed, declare that what claim is :

- 1..... } (Here state distinctly
2..... } the features of novelty
3..... } claimed.)
Dated this..... day of, 19....

..... (Signature of the applicant or applicants or their attorneys or patent agents.)

SCHEDULE " D ".

I,..... (name and address)
 hereby give notice of my intention to oppose the grant of a patent upon applica-
 tion No..... of, applied for by.....
 upon the ground.....

.....
 (Signature of the objector.)

SCHEDULE " E ".

EDWARD, by the Grace of God, of the United Kingdom of Great Britain and
 Ireland, and of the British Dominions beyond the Seas, King, Emperor of
 India, Defender of the Faith, to all to whom these presents shall come,
 greeting :

WHEREAS John Smith, of, by profession,
 hath by his declaration represented unto us that he is in possession of an in-
 vention for (insert title of invention) that he is the true and first inventor thereof
 and that the same is not in use by any other person to the best of his knowledge
 and belief. And whereas the said inventor hath humbly prayed that we would
 be graciously pleased to grant unto him (hereinafter together with his heirs
 executors and assigns or any of them referred to as the said patentee) our
 Royal Letters Patent for the sole use and advantage of his said invention. And
 whereas the said inventor hath by and in his complete specification particularly
 described the nature of his invention. And whereas we being willing to en-
 courage all inventions which may be for the public good are graciously pleased
 to condescend to his request : Know ye therefore that we of our especial grace
 certain knowledge and mere motion do by these presents for us our heirs and
 successors give and grant unto the said patentee our especial licence, full power,
 sole privilege, and authority that the said patentee by himself, his agents, or
 licencees, and no others, may at all times hereafter during the term of years
 herein mentioned make use, exercise, and sell the said invention within our
 Colony of the Transvaal in such manner as to him or them may seem meet and
 that the said patentee shall have and enjoy the whole profit and advantage from
 time to time accruing by reason of the said invention during the term of
 fourteen years from the date hereunder written of these presents : And to the
 end that the said patentee may have and enjoy the sole use and exercise and the
 full benefit of the said invention we do by these presents for us our heirs and
 successors strictly command all our subjects whatsoever within our said Colony
 that they do not at any time during the continuance of the said term of fourteen
 years either directly or indirectly make use of or put in practice the said
 invention or any part of the same nor make or cause to be made any addition
 thereto or subtraction therefrom whereby to pretend themselves the inventors
 thereof without the consent, licence, or agreement of the said patentee in writing
 under his hand on pain of incurring such penalties as may be justly inflicted on
 such offenders for their contempt of this our Royal Command and of being
 answerable to the patentee according to law for his damages thereby occasioned :
 Provided that these our Letters Patent are on this condition that if at any time
 during the said term it shall appear that this our grant is contrary to law or
 prejudicial or inconvenient to our subjects in general or that the said invention
 is or has become liable to be revoked under the provisions of " The Patents
 Proclamation, 1902 ", on any of the grounds therein set forth or if the said
 patentee shall not supply or cause to be supplied for our service all such articles
 of the said invention as may be required by the officers or Commissioners
 administering any department of our service in such manner, at such times, and
 at and upon such reasonable prices and terms as shall be settled in manner for
 the time being by law provided, then and in any of the said cases these our
 Letters Patent, and all privileges and advantages whatever hereby granted shall
 determine and become void, notwithstanding anything hereinbefore contained :
 Provided also that nothing herein contained shall prevent the granting of
 licencees in such manner and for such considerations as they may by law be
 granted : And lastly we do by these presents for us our heirs and successors
 grant unto the said patentee that these our Letters Patent shall be construed in
 the most beneficial sense for the advantage of the said patentee. In witness
 whereof we have caused these our letters to be made patent, and to be sealed as
 of the.....day of....., one thousand nine hundred and.....

Seal of Patent Office.

SCHEDULE " F ".

Letters Patent No....., of....., for..... (title of invention).

It is hereby notified for general information that.....
(name and residence of inventor) has applied to me for leave
 to amend the specification of the above-mentioned invention by way of.....
, the particulars whereof are given hereunder.

I have decided that this application and all objections thereto shall be
 considered at my office on the..... day of the month of....., 19...
 at..... o'clock, or as soon as possible thereafter; and I therefore
 call upon all persons who are interested in opposing the granting of this applica-
 tion to deposit at my office before the said date of hearing a statement in writing
 setting forth their objections, as otherwise they will be debarred from bringing
 such objections forward.

Dated this.....day of....., 19....

.....
Commissioner of Patents.

The alteration which I desire to make in..... is as follows:
 (The applicant shall here state clearly what he desires and his grounds herefor
 and sign the same.)

SCHEDULE " G ".

Letters Patent No....., of....., for..... (title of invention).

It is hereby notified for general information that I have made a petition to
 His Excellency the Governor requesting an extension of the term of the above-
 mentioned Letters Patent and that this petition has been referred to the.....
 court for consideration.

The hearing of this petition has been fixed for the..... day of.....,
 19..., in thenoon, at..... o'clock, or as soon thereafter as the
 case can be heard.

All persons who are interested in opposing the granting of this request must
 deposit their objections in writing with the Registrar of the Court at least one
 month before the said date of hearing, as otherwise they will be debarred from
 bringing such objections forward.

Dated this.....day of....., 19....

.....
 (Signature of applicant.)

SCHEDULE " H ".

LIST OF FEES PAYABLE AT THE PATENT OFFICE ON AND IN CONNECTION WITH
 LETTERS PATENT.

List of fees superseded by Act No. 15 of 1909, Fourth Schedule.

Proclamation
(Trans.) No.
23 of 1902.

*PROCLAMATION No. 23 OF 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 10th April, 1902.)

TO AMEND THE LAW RELATING TO THE REGISTRATION OF
TRADE MARKS IN THIS COLONY.

Preamble.

WHEREAS it is expedient to amend the law relating to the registration of Trade Marks in this Colony :

Now therefore, by virtue of the authority in me vested, I do hereby declare, proclaim, and make known as follows :

Repeals.

1. Law No. 6 of 1892 and so much of any other law as may be repugnant to or inconsistent with the provisions of this Proclamation are hereby repealed ; but no such repeal shall affect anything duly done, or any right or privilege acquired, or any liability, penalty, or forfeiture incurred in respect of any such laws.

Application
for registra-
tion.

2. (1) The Commissioner of Patents, who shall also be the Registrar of Trade Marks and is hereinafter referred to as the Registrar, may on application by, on or behalf of any person claiming to be the proprietor of a trade mark, register the trade mark.

(2) The application must be made in the prescribed form and accompanied by the prescribed number of representations of the trade mark and must state the particular goods or classes of goods in connection with which the applicant desires the trade mark to be registered.

(3) The Registrar may, if he thinks fit, refuse to register a trade mark, but any such refusal shall be subject to appeal to the court, which shall, if required, hear the applicant and the Registrar and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(4) When an applicant for the registration of a trade mark is out of this Colony at the time of making the application, he shall give the Registrar an address for service in this Colony, and if he fails to do so the application shall not be proceeded with until the address has been given.

(5) Where registration of a trade mark has not been or shall not be completed within twelve months from the date of the application by reason of default on the part of the applicant, the application shall be deemed to be abandoned.

Definition of
trade mark.

3. For the purposes of this Proclamation a trade mark must consist of or contain at least one of the following essential particulars :—

(a) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner ; or

* See also Merchandise Marks Ordinance (No. 47 of 1903).

As to forfeiture of goods bearing forged or false merchandise marks see Ord. No. 1, 1903, sec. 52.

(b) a written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark ; or

(c) a distinctive device, mark, brand, heading, label or ticket ; or

(d) an invented word or invented words ; or

(e) a word or words having no reference to the character or quality of the goods and not being a geographical name.

And there may be added to any one or more of these particulars any letters, words or figures, or combination of letters, words or figures, or any of them ; but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register. Provided as follows :—

(1) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.

(2) Any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures used as a trade mark before Law No. 6 of 1892 came into operation, may be registered as such under this Proclamation.

4. A trade mark must be registered as belonging to particular goods or description of goods and when registered shall be transferred and transmitted only in connection with the goodwill of the business concerned in such particular goods or description of goods and shall be determinable with such goodwill but subject as aforesaid application for registration of a trade mark shall be deemed to be equivalent to public use of such mark. How to be registered.

5. A trade mark may be registered in any colour or colours and such registration shall, subject to the provisions of this Proclamation, confer on the registered owner the exclusive right to use the same in that or any other colour or colours. Trade marks may be registered in any colour.

6. Every application for registration of a trade mark under this Proclamation shall, as soon as may be after its receipt, be advertised by the Registrar unless the Registrar refuse to entertain the application. Advertisement of application.

7. (1) Any person may within one month, or such further period not exceeding three months as the Registrar may allow, of the advertisement of the application, give notice in duplicate at the Patent Office of opposition to registration of the trade mark, and the Registrar shall send one copy of such notice to the applicant. Opposition to registration.

(2) Within one month after the receipt of such notice, or such further time as the Registrar may allow, the applicant may send to the Registrar a counter-statement in duplicate of the grounds on which he relies for his application, and if he does not do so shall be deemed to have abandoned his application.

(3) If the applicant sends such counter-statement, the Registrar shall furnish a copy thereof to the person who gave notice of opposition and shall, after hearing the applicant and the opponent, if so required, decide whether the trade mark is to be registered, but his decision shall be subject to appeal to the court which shall hear the applicant and the opponent and the Registrar and may make an order determining whether and subject to what conditions (if any) registration is to be permitted.

(4) If the applicant abandons his application after notice of opposition in pursuance of this section, he shall be liable to pay to the opponent such costs in respect of the opposition as the Registrar may determine* to be reasonable.

(5) Where the opponent is out of this Colony, he shall give the Registrar an address for service in this Colony.

‡(6) *The Registrar shall have power to order that the costs of any proceeding under this section shall be paid by either party thereto in all respects as if the Registrar were a judge of the court, and such costs shall be taxed by the taxing officer and paid, and the payment thereof may be enforced in the same manner as if the same were costs allowed by a judge of the court.*

‡(7) *In case the applicant or the opponent is residing abroad or has no fixed property within this Colony, then the applicant or the opponent, prior to the hearing of the application or opposition or any appeal, as the case may be, shall have the right to require that security to the satisfaction of the Registrar or the said court, as the case may be, be lodged by the applicant or opponent for the costs, and if such security is not lodged or given the application or opposition or appeal, as the case may be, shall not be taken into consideration by the Registrar or the said court.*

Conflicting
claims to
registration.

8. Where each of several persons claims to be registered as proprietor of the same trade mark, the Registrar may refuse to register any of them until their rights have been determined according to law, and the Registrar may himself submit or require the claimants to submit their rights to the court.

When leave
of the court
to register
necessary.

9. The Registrar shall not, without the special leave of the court to be given in the prescribed manner, register in respect of the same goods or description of goods, a trade mark identical with one which is already registered with respect to such goods or description of goods, and the Registrar shall not without such leave as aforesaid register with respect to the same goods or description of goods, a trade mark having such resemblance to a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive. It shall not be lawful to register as part of or in combination with a trade mark any words the use of which would, by reason of their being calculated to deceive or otherwise be deemed disentitled to protection in a† court of justice in England or any scandalous designs.

* As in *Gazette*; in Proc. 1900-1902, the word "deem" is given.

‡ Sub-secs. (6) and (7) added by Ord. No. 3 of 1904, sec. 1 (a).

† As in *Gazette*; in Proc. 1900-1902, the words "the courts" are given.

10. From and after the first day of August, 1902, a person shall not be entitled to institute any proceedings to prevent or recover damages for the infringement of any trade mark capable of being registered under this Proclamation until and unless such trade mark is registered in pursuance of this Proclamation, or unless it has been registered under the provisions of Law No. 6 of 1892.

No action to lie for infringement of non-registered trade mark.

11. The registration of a person as first proprietor of a trade mark shall be *primâ facie* evidence of his right to the exclusive use of such trade mark, and shall after the expiration of five years from the date of such registration be conclusive evidence of his right to the exclusive use of such trade mark subject to the provisions of this Proclamation as to its connection with the goodwill of a business.

Effect of registration as first proprietor.

12. There shall be kept at the Patent Office a book called the Register of Trade Marks, wherein shall be entered the names and addresses of proprietors of registered trade marks, notifications of assignment and of transmissions of trade marks and such other matters as may be from time to time prescribed, provided always that there shall not be entered on the register, or be receivable by the Registrar, any notice of any trust express implied or constructive.

Register of Trade Marks.

13. Where a person becomes entitled by assignment, transmission, or other operation of law to a registered trade mark, the Registrar shall on request and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the trade mark in the Register of Trade Marks. The person for the time being entered in the Register of Trade Marks as proprietor of a trade mark, shall, subject to the provisions of this Proclamation, and to any rights appearing from such register to be vested in any other person, have power absolutely to assign or otherwise deal with the same, and to give effectual receipts for any consideration for such assignment or dealing.

Entry of assignments.

14. The Register of Trade Marks kept under this Proclamation, shall, at all convenient times be open to the inspection of the public, subject to the provisions of this Proclamation, and to such regulations as may be prescribed, and certified copies, sealed with the seal of the Patent Office, of any entry in such register shall be given to any person requiring the same, on payment of the prescribed fee.

Inspection of and extracts from register.

15. Printed or written copies, or extracts purporting to be certified by the Registrar and sealed with the seal of the Patent Office, of, or from any documents in the Patent Office relating to trade marks, and of or from the Register of Trade Marks, or other books relating to trade marks kept there, shall be admitted in evidence in all courts in this Colony, and in all proceedings, without further proof or production of the originals.

Sealed copies to be received in evidence.

16. If the name of any person who is not for the time being entitled to the exclusive use of a trade mark in accordance with this Proclamation, or otherwise in accordance with law, is entered on the Register of Trade Marks as a proprietor of such trade mark, or if any mark is registered as a trade mark which

Court may rectify the register.

is not authorized to be so registered under this Proclamation, any person aggrieved may apply in the prescribed manner for an order of court that the register may be rectified, and the court may either refuse such application, or it may, if satisfied with the justice of the case, make an order for the rectification of the register, and may award damages to the party aggrieved. The court may, in any proceeding under this section, decide any question as to whether a mark is or is not such a trade mark as is authorized to be registered under this Proclamation; also any question relating to the right of any person who is a party to such proceeding, to have his name entered on the Register of Trade Marks, or to have the name of some other person removed from such register; also any other question that it may be necessary or expedient to decide for the rectification of the register. Whenever any order has been made rectifying the register, the court shall, by its order, direct that due notice of such rectification be given to the Registrar.

Power of Registrar to correct clerical errors.

17. The Registrar may, on request in writing accompanied by the prescribed fee

(a) correct any clerical error in or in connection with an application for registration of a trade mark; or

(b) correct any clerical error in the name, style or address, or alter the address of the registered proprietor of a trade mark;

(c) cancel the entry or part of the entry of a trade mark on the register; provided that the applicant accompanies his request by a declaration, on oath, made by himself, stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the said trade mark;

(d) permit an applicant for registration of a trade mark to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the trade mark to be registered;

**(e) correct any error in or in connection with an application for registration of a trade mark or any registered trade mark in any special circumstances not provided for by the provisions of this Proclamation upon such terms and upon such conditions as the Registrar may think fit.*

Alteration of registered mark.

18. (1) The registered proprietor of any registered trade mark may apply to the court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Proclamation, and the court may refuse or grant such leave on such terms as it may think fit.

(2) Notice of any intended application to the court under this section shall be given to the Registrar by the applicant, and the Registrar shall be entitled to be heard on the application.

(3) If the court grants leave, the Registrar shall, on proof thereof, and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.

* Sub-sec. (e) added by Ord. No. 3 of 1904, sec. 1 (b).

19. If any person makes or causes to be made a false entry in the Register of Trade Marks, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders, or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be liable to imprisonment for a term not exceeding two years, with or without hard labour.

Falsification of entries in register.

20. (1) Any person who describes any trade mark applied to any article sold by him as registered which is not so, shall be liable for every offence, on conviction before a court of resident magistrate, to a fine not exceeding one hundred pounds sterling.

Penalty on falsely representing any trade mark as registered.

(2) A person shall be deemed for the purposes of this Proclamation to represent a trade mark as registered if he sells the article with the word "registered", or any word or words expressing or implying that registration has been obtained, stamped, engraved, or impressed on or otherwise applied to the article.

21. If any one is unable by reason of tender age or weakness of mind or other incapacity to make a declaration, or perform an act required or permitted by this Proclamation or by any rules made under it, then his guardians or curators, or failing these, a person appointed by the court on the application of any one on behalf of such person, or on the application of any one interested in the making of such declaration or performing such act, may make such a declaration, or one as near as possible to the one prescribed, or do such act in the name and on behalf of such aforesaid person. All acts done by such representative shall, for the purposes of this Proclamation, be as effectual as if done by the person so represented.

Representatives may act for infant, etc.

22. Where any discretionary power is by this Proclamation given to the Registrar, he shall not exercise that power adversely to the applicant for registration of a trade mark without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

Exercise of discretionary power by the Registrar.

23. The certificate of the Registrar as to any entry matter or thing which he is authorized by this Proclamation, or any general rules made thereunder, to make or do, shall be *prima facie* evidence of such entry having been made and of the contents thereof, and of such matters and things having been done or left undone.

Effect of Registrar's certificate

24. (1) Any person who has applied for protection for any trade mark in a foreign country shall be entitled to registration of his trade mark under this Proclamation in priority to other applicants, provided that such application is made within six months from his applying for registration in such foreign country, and any such registration shall have the same date as the date of application in such foreign country.

Protection of foreign trade marks.

(2) The use in this Colony, during the said period of six months, of the trade mark shall not invalidate the registration of the same.

(3) The application for the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Proclamation, provided that

any trade mark, the registration of which has been duly applied for in the country of origin, may be the subject of an application for registration under this Proclamation.

(4) Nothing in this section contained shall entitle the proprietor of a trade mark to recover damages for infringements happening prior to the actual registration of his trade mark in this Colony.

Registrar may
make general
rules.

*25. The Registrar may from time to time, with the consent of the Governor, make, and when made alter, annul or vary such general rules as to the registry of trade marks, and as to notices to be given by advertisement before the registration of trade marks, and as to the classification of goods for the purposes of this Proclamation, and as to the registration of first and subsequent proprietors of trade marks, and as to the removal from the register of any trade mark, as to notices and as to the persons entitled to inspect the register, and as to the proceedings to be taken to obtain the judgment or leave of the court in any matter in which the judgment or leave of the court is required to be obtained under this Proclamation, and generally for the purpose of carrying into effect this Proclamation as he may deem expedient. Any rules made in pursuance of this section shall, on publication in the *Gazette*, have the force of law.

Fees.

*26. There shall be paid in respect of applications and registration, and other matters under this Proclamation, such fees as may be from time to time, with the consent of the Governor, prescribed by the Registrar, and such fees shall be levied and paid to the account of the Colonial Revenue in such manner as the Controller of the Treasury may from time to time direct.

Directions to
Registrar
from Legal
Adviser.

27. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Proclamation, apply to the Legal Adviser of the Transvaal Administration for directions in the matter.

Definition of
terms.

28. For the purposes of this Proclamation—

“Prescribed” means prescribed by general rules made in pursuance of this Proclamation.

“Court” means the High Court of the Transvaal.

“Foreign country” means any country, Colony or State other than this Colony, and whether a British possession or not.

“Governor” means the officer for the time being administering the government of this Colony.

Short title.

29. This Proclamation may be cited for all purposes as “The Trade Marks Registration Proclamation, 1902”, and shall be of force and effect from and after the first day of May, 1902.

* Such rules were published under Govt. Notices Nos. 180, 1902 (*Gazette* 9th May, 1902), and 1099, 1909 (*Gazette* 24th September, 1909).

PROCLAMATION No. 24 OF 1902.

Proclamation
(Trans.) No.
24 of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 19th April, 1902.)

WHEREAS it is expedient to make provision for the vesting and protection of the copyright in certain maps of His Majesty's South African Dominions, printed by, and under the authority of, the Commander-in-Chief of His Majesty's Forces in South Africa :

Preamble.

Now therefore, by virtue of the authority in me vested, I do hereby proclaim, declare and make known, as follows :—

1. Notwithstanding anything contained in Law No. 2 of 1887, the copyright in all maps of His Majesty's South African Dominions made and compiled by the Field Intelligence Department of His Majesty's Forces in South Africa, and published in this Colony, shall be vested in and belong to the General Officer Commanding-in-Chief His Majesty's Forces in South Africa for the time being, as if such officer were or had been the author thereof, and such officer shall have all the rights and privileges conferred by Law No. 2 of 1887 in respect of such maps.

Copyright in
maps
compiled for
Field
Intelligence
Department
of H.M.
Forces.

2. Within two months of the publication in this Colony of any map or maps of any portion of His Majesty's South African Dominions, there shall be deposited with the Registrar of Deeds at Pretoria three copies of the same signed by some person duly authorized thereto by the said General Officer Commanding-in-Chief.

Deposit with
Registrar of
Deeds.

3. Save as provided in the last preceding section it shall not be necessary for the due protection and continuance of the copyright in such map or maps to comply with any other of the provisions of section *ten* of Law No. 2 of 1887.

Not necessary
to comply
with other
provisions of
Copyright
Law.

Proclamation
(Trans.) No.
25 of 1902.

PROCLAMATION No. 25 OF 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 19th April, 1902.)

AMENDING LAW No. 3 OF 1897.

Preamble.

WHEREAS it is expedient to amend Law No. 3 of 1897, and to make provision for divorce between coloured persons in this Colony.

Now therefore, by virtue of the authority in me vested, I do hereby declare, proclaim and make known as follows:—

Repeal of
articles of
Native
Marriage
Law as to
divorce of
natives and
substituted
enactment.

1. The second and third paragraphs of article *ten* of Law No. 3 of 1897, are hereby repealed and the following substituted in lieu thereof:

“The suit for such divorce shall be brought in the same court and in the same manner as if the parties thereto had been white persons.

“The Registrar of the Court shall give notice of each divorce pronounced by such court, by sending a certified copy of the sentence to the person by whom or in whose district the marriage was celebrated”.

2. Article *thirteen (b)* is hereby repealed and the following substituted in lieu thereof:

“Divorces between coloured persons pronounced by a competent court which have been notified to him in accordance with article *ten*”.

Repealed by Act 30 of 1911

PROCLAMATION No. 26 OF 1902.

Proclamation
(Trans.) No.
26 of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 28th April, 1902.)

TO AMEND THE FIRST AND SECOND SCHEDULES TO THE STAMP
DUTIES AMENDMENT PROCLAMATION, 1902.

BY virtue of the authority in me vested I do hereby declare,
proclaim and make known, as follows :—

1. So much of section *twelve* of Law No. 5 of 1874,* as requires payment of the sums of ten, twenty and thirty pounds as the case may be on the registration of companies with limited liability, shall be and is hereby repealed; and the First Schedule of the "Stamp Duties Amendment Proclamation" shall be amended accordingly. Amendment
of Law No. 5
of 1874.

2. The Second Schedule to the "Stamp Duties Amendment Proclamation, 1902", is hereby amended by inserting under the heading of "Exceptions from Stamp duty" in respect of receipts, the following exemptions :— Amendment
of Pr. Tr. 12
of 1902.

- (a) Receipt given for money deposited in a bank, or with any banker to be accounted for, and expressed to be received of the person to whom the same is to be accounted for.
- (b) Acknowledgment by any banker of the receipt of any bill of exchange or promissory note, for the purpose of being presented for acceptance or payment.

* Law No. 5 of 1874 is repealed.

Proclamation
(Trans.) No.
27 of 1902.

PROCLAMATION No. 27 OF 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 28th April, 1902.)

TO AMEND THE TRANSFER DUTY PROCLAMATION, 1902.

By virtue of the authority in me vested I do hereby declare, proclaim and make known, as follows:—

Amendment
of Pr. Tr. 8
of 1902.

1. Sub-section (2) of section *twenty-nine* of the "Transfer Duty Proclamation, 1902" is hereby repealed, and the following substituted in lieu thereof:—

"No cession of any such lease as is mentioned in the preceding sub-section, made after the taking effect of this Proclamation, shall be of any force or effect against creditors or any subsequent bona fide purchasers thereof, unless such cession be registered in the registration office in which such lease is registered."

2. For the purposes of section *seven* of the "Transfer Duty Proclamation, 1902", no interest shall be deemed to accrue in respect of the period between the first day of October, 1899, and the opening of the registration offices, to wit, the 20th of May next.

PROCLAMATION No. 28 OF 1902.*

Proclamation
(Trans.) No.
28 of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 16th May, 1902.)

FOR REGULATING THE ADMINISTRATION OF THE ESTATES OF
DECEASED PERSONS, MINORS AND LUNATICS, AND OF
DERELICT ESTATES.

WHEREAS it is expedient to abolish the Orphan Chamber and the office of Orphan Master within this Colony : Preamble.

And whereas, it is expedient to alter and amend the law of this Colony relating to the registrations of wills, and the administration of estates and property of persons dying either testate or intestate :

And whereas, it is likewise expedient to alter and amend the law of this Colony relating to the administration and management of the estates and property of minors and lunatics, and in certain cases of persons absent from this Colony :

Now therefore, by virtue of the authority in me vested, I do hereby declare, proclaim and make known as follows :—

PART I.

MASTER OF SUPREME COURT SUBSTITUTED FOR ORPHAN MASTER.

1. The Orphan Chamber within this Colony and the office of Orphan Master shall be, and are hereby, abolished. Abolition of Orphan Chamber.

2. All the duties which have heretofore been performed by the said Orphan Master shall henceforth be performed by the Master for the time being of the Supreme Court of the Transvaal, who shall be, and is hereby authorized and required to do, and cause to be done, every matter and thing which the said Orphan Master was by law authorized, or required to do, or cause to be done. Master of Supreme Court substituted for Orphan Master.

3. All persons, property, estates, matters and things which have at any time lawfully fallen, or been placed under, and which shall be at the time of the taking effect of this Proclamation under the guardianship, charge, or administration of the said Orphan Master shall be, and the same are hereby declared to be under the guardianship, charge and administration of the Master of the Supreme Court. Transfer of administration from Orphan Chamber to Master.

4. All books, accounts, vouchers, records and other documents of whatsoever description which, if the said Orphan Chamber had not been abolished, ought by law to have been under the charge, control, or custody of the Orphan Master, shall be placed and shall be and remain under the charge, control, and custody of the Master of the Supreme Court. Custody of books, accounts and documents.

* Sec Ord. 15, 1905 ; Act 28, 1909 (Estate Duty).

PART II.

ESTATES OF DECEASED PERSONS.

Death Notices.

Death notices
to magistrate
or Master.

5. Whenever any person shall die leaving any property in possession, reversion, or expectancy, or leaving a will, the nearest relative or connection of the deceased who shall be at, or near the place of death, and in default of any such near relative or connection the person who at or immediately after the death shall have the chief charge of the house in or of the place on which the death occurs, shall within fourteen days thereafter cause a notice of death to be framed in the form set out in the Schedule "A" to this Proclamation, and shall cause such notice signed by himself to be delivered or transmitted

(a) to the Master if the death occurs in Pretoria or the district thereof;

(b) to the resident magistrate of the district if the death occurs elsewhere, in which case such notice shall be accompanied by a duplicate, or a fair and true copy thereof.

And every magistrate to whom such notice as aforesaid shall be given, shall cause the duplicate or copy thereof to be examined and compared with the original and if need be corrected and shall authenticate such duplicate or copy with his signature, and shall file and register the same and shall forthwith transmit the original notice to the Master. In case it shall appear that the person signing the death notice was not present at the death the Master may call upon such person for proof of death.

If death
notice
defective
executor to
furnish
further
information.

6. In case the information in any death notice is defective or insufficient, the Master may call upon any executor after his appointment to furnish such further information as may be required, and every executor so called upon shall without delay return his written answers to such questions as the Master may put for that purpose.

Penalty
clause.

7. Any person who shall fail to comply with the provisions of the *fifth* and *sixth* sections of this Proclamation, shall be liable to a penalty not exceeding twenty pounds, or in default of payment thereof to imprisonment with or without hard labour for any period not exceeding three months.

WILLS.

Deposit of
wills, etc.,
with Master.

8. It shall be competent for any person to deposit with the Master, either open or enclosed under a sealed cover, any will, codicil, or testamentary instrument executed by him; and the Master shall keep, or cause to be kept, a register of the names and descriptions of the persons depositing every such deed and the date of depositing the same; and every such deed shall be accompanied by a duplicate or fair and true copy thereof, which, together with the original, shall be kept under the charge and custody of the Master until the death of the maker thereof, unless re-delivery of the same be demanded by the said maker, or in his lifetime by his lawful attorney specially authorized for

that purpose, and when any such deed shall be re-delivered in manner aforesaid, the maker or his attorney as the case may be shall sign a receipt for the same.

9. Every person other than the Master, who shall at the time of the death of the maker thereof have in his possession any deed purporting to be, or entitled the last will, codicil, or other testamentary instrument of any other person, or into whose possession any such deed shall come after the death of the maker thereof, shall forthwith by the first opportunity deliver or transmit every such deed to the Master, when such person shall reside in Pretoria or the district thereof, and when such possessor shall reside in any other district of the Colony, then to the resident magistrate of the district in which he shall reside or be at the time, and if to the magistrate, shall also deliver or transmit to him a duplicate or fair and true copy thereof, and every such resident magistrate shall cause such duplicate or copy to be examined and compared with the original, and if need be corrected, and shall authenticate such duplicate or copy with his signature, and shall file and register the same, and every such magistrate shall forthwith transmit the original deed to the Master; provided always that if such magistrate shall not be the resident magistrate of the district in which such deceased person ordinarily resided at the time of his death, he shall transmit the duplicate or copy of such will, codicil, or other testamentary instrument authenticated as aforesaid to the resident magistrate of such last-mentioned district, and such last-mentioned magistrate shall file and register the same. Every notary public shall, when called upon by the Master to do so, transmit the original minute of any will, codicil, or testamentary instrument passed before him to the Master. Any person failing to comply with the provisions of this section shall be liable to a fine not exceeding twenty pounds, or in default of payment to imprisonment with or without hard labour for any period not exceeding three months.

Persons in possession of wills, etc., on testator's death bound to transmit them forthwith to the Master in Pretoria or to the resident magistrate in the country districts.

10. If any person shall, either during the life of the testator or after his death, steal, or wilfully destroy or conceal any will, codicil, or other testamentary instrument, every such offender shall upon conviction, be liable to imprisonment with or without hard labour for any period not exceeding seven years, or to a fine not exceeding five hundred pounds sterling, or to both such imprisonment and such fine; and it shall not in any indictment for such offence be necessary to allege that such will, codicil, or other instrument is the property of any person or is of any value; provided always that nothing herein contained relating to the said offences nor any proceeding, conviction, acquittal, or judgment to be had or taken thereupon shall prevent, lessen, or impeach any remedy which any person aggrieved by any such offence might or would by law have had by means of any civil action, suit, or proceeding if this Proclamation had not been passed; but nevertheless the conviction of any such offender shall not be received as evidence against him, nor his acquittal as evidence for him in any such civil action, suit, or proceeding against him.

Penalty for theft, destruction or concealment of wills, etc., punishment.

Warrants to search for stolen or concealed wills by judges, magistrates, etc.

11. The chief justice, every judge of the Supreme Court, and every resident magistrate or justice of the peace, upon information taken on oath being transmitted to him by the Attorney-General or any public prosecutor, or the Master, or upon the information of any person made on oath before any such judge, magistrate, or justice of the peace, that there is reason to suspect that any will, codicil, or other testamentary instrument is concealed in any place within the jurisdiction of such judge, magistrate, or justice of the peace may by warrant under his hand cause every such place to be searched.

Applications by Master to the court or a judge for an order on persons refusing to give up wills.

12. If any person who shall reasonably be believed to be in possession of, or have under his control any will, codicil, or other testamentary instrument shall, after the death of the testator refuse or fail to deliver or transmit the same in manner hereinbefore provided, the Master is hereby authorized and required forthwith to apply to the Supreme Court or any judge thereof for an order of such court or judge on such person forthwith to deliver such will, codicil, or other instrument.

Enregistration of wills, etc., at testator's death.

13. Every deed being or purporting to be the will, codicil, or other testamentary instrument of any person which shall have been deposited with, or transmitted to the Master in manner hereinbefore provided, shall after the death of the maker thereof, be enregistered by the Master in the Register of Estates, for which purpose the Master is hereby authorized and required to open or cause to be opened, every such deed which may be sealed up; provided always that notwithstanding any such registration, all questions as to the validity and legal effect of every such deed shall be reserved and remain for the decision of the Supreme Court; and provided that where such deed has been deposited with the Master previous to the death of the maker thereof, the Master shall cause the duplicate or copy deposited with the said deed to be examined and compared with the original, and if need be corrected, and shall authenticate such duplicate or copy with his signature and shall transmit the same to the resident magistrate of the district in which the deceased ordinarily resided at the time of his death, if such district is not the district of Pretoria, and the said magistrate shall cause the same to be filed and registered.

INVENTORIES.

Inventory of estate in community by surviving spouse within thirty days of the death.

14. When one of two spouses who have been married in community of property shall die, the survivor shall within thirty days after the death of the deceased, cause an inventory of all property, goods, and effects, movable and immovable of what kind soever, which at the time of the death shall have formed part of or belonged to, the estate possessed in community between the predeceased and surviving spouses, to be made in the presence of two impartial witnesses being persons of good credit and repute, and of such persons having an interest in the distribution of the joint estate as heirs or legatees of the predeceased spouse who shall attend; and every such inventory shall be subscribed by the surviving spouse, the witnesses aforesaid, and such heirs or* legatees as shall be present at the making thereof.

* As in *Gazette*: in Proc. 1900-1902, the word "and" is given.

15. Every surviving spouse who shall wilfully neglect to cause an inventory of the joint estate to be made in manner and within the period hereinbefore provided, or shall knowingly omit to enter in such inventory any article of property of whatsoever kind shall, in the distribution of such estate, forfeit all right to and share in anything which may accrue to the joint estate after the death of the predeceasing spouse, and in and to such property so omitted in the inventory; and every loss which shall have been caused by the destruction or deterioration of any such property so omitted in the inventory, or which shall have accrued to the joint estate after the death of the predeceasing spouse by the loss or deterioration of any part thereof, shall in the distribution of the estate fall upon and be borne by such surviving spouse solely and exclusively; provided always that nothing herein contained shall free or exempt any person who shall wilfully or for any fraudulent purpose make or cause to be made any false inventory of any such joint estate from any penalty or punishment hereinafter or by any other law provided with respect to the offence of making false inventories.

Penalties on omission of inventory.

16. On the death of any person not being one of two spouses married in community of property, the wife or husband of the deceased, or in default or absence of the wife or husband, the child or children of the deceased, or in default absence or minority of the child or children, the next of kin of the deceased, or in default absence or minority of the next-of-kin, the person who at or immediately after the death shall have the chief charge of the house in, or of the place on which the death shall occur, shall within fourteen days after the death, make or cause to be made in the presence of two impartial witnesses, being persons of good credit and repute, an inventory of all goods and effects belonging to the deceased and being in the house or upon the premises at the time of the death, and of all other goods and effects known by the person making or causing such inventory to be made to have belonged to the deceased. And every such inventory shall be subscribed by the person making or causing the same to be made by the witnesses aforesaid.

Inventory on the death of persons not married in community.

17. Every person hereinbefore required or directed to make or cause to be made any such inventory as aforesaid, shall so soon as the same has been made, forthwith deliver or transmit every such inventory

Transmission of inventory to Master or resident magistrate.

(a) to the Master, if such person shall reside in Pretoria or the district thereof;

(b) to the resident magistrate when such person shall reside in any other district in which case such inventory shall be accompanied by a duplicate or fair and true copy thereof;

and every such resident magistrate shall cause the duplicate or copy of every such inventory so delivered or transmitted to him to be examined, and if need be corrected, and shall authenticate such duplicate or copy with his signature and file the same of record in his office, and shall transmit the original to the Master.

18. Notwithstanding anything hereinbefore contained, it shall be lawful for the Supreme Court or any judge thereof, or the Master, on sufficient cause appearing at any time to order that

Inventory by order of Supreme Court, judge or Master.

an inventory of any property belonging to any deceased person or to the joint estate of any deceased person, and the surviving spouse shall be taken by any person named in such order.

Particulars required as to immovable property.

19. Every person who is required by the *fourteenth*, *sixteenth* and *eighteenth* sections of this Proclamation to make any inventory, shall include therein a specified list of all immovable property wherein to his knowledge the deceased had an interest at the date of his death, and if possible a reference to the title under which the deceased held such interest and the date of such title.

Penalty clause.

20. Every person who shall fail to comply with the provisions of the *fourteenth*, the *sixteenth* or *seventeenth* sections of this Proclamation shall, in addition to any penalty provided by this Proclamation or any other law, be liable to a penalty not exceeding twenty pounds, or in default of payment to imprisonment with or without hard labour for any period not exceeding three months.

Penalty for false inventory.

21. If any person required and directed, under and by virtue of the provisions of the *fourteenth*, *sixteenth* and *eighteenth* sections of this Proclamation, to make, or cause to be made, an inventory of any estate, goods, or effects, shall wilfully make a false inventory thereof, every such offender shall, upon conviction, be liable to punishment by imprisonment with or without hard labour for any period not exceeding five years, or by a fine not exceeding five hundred pounds, or by both such imprisonment and such fine.

CUSTODY OF ESTATE PENDING ISSUE OF LETTERS OF ADMINISTRATION.

Possession by survivor of estate in community of property until institution of proceedings for settlement.

22. When one of two spouses who have been married in community of property shall die; the joint estate shall remain under the charge of the survivor, until the executor of the deceased, or the tutor testamentary or dative of the minor children of the marriage, or the Master or curator bonis, lawfully appointed to such minor children, shall take proceedings for the administration, distribution, and final settlement of the said joint estate; provided always that nothing herein contained shall prevent any such joint estate from being placed under sequestration as insolvent.

Custody of estate of person not married in community.

23. On the death of any person, not being one of two spouses, married in community of property, the husband or wife of the deceased, or in default or absence of the husband or wife the child or children of the deceased, or in default, absence or minority of the child or children the next-of-kin of the deceased, or in default, absence or minority of the next-of-kin, the person who at or immediately after the death shall have the chief charge of the house in, or of the place on which the death shall occur, shall secure and take charge of all goods and effects of whatever description belonging to the deceased, and being in the house or upon the premises at the time of death, and shall retain the same in his or her custody or possession until delivery thereof shall be demanded by the executor of the deceased or by any other person lawfully appointed by the Supreme Court or any judge thereof, or the Master to receive delivery of the same.

*24. In all cases where it may be necessary or expedient to do so, the Master may appoint a curator bonis to take the custody and charge of any estate, until letters of administration shall be granted to executors, testamentary or dative, for the due administration and distribution thereof; and every such curator bonis may collect such debts and may sell or dispose of such perishable property belonging to the estate as the Master shall specially authorize; and every appointment made by the Master of any curator bonis shall, on the application of any person having an interest in such estate, be subject to be reviewed and confirmed or set aside by the Supreme Court or any judge thereof; and such court or judge by whom such appointment shall be set aside may appoint some other fit and proper person to be curator bonis.

Appointment of curator bonis until issue of letters of administration.

LETTERS OF ADMINISTRATION,

25. The estates of all persons dying either testate or intestate shall be administered and distributed according to law under letters of administration to be granted in the form contained in the Schedule hereunto annexed, marked "B" by the Master to the testamentary executors duly appointed by such deceased persons, or to such persons as shall in default of testamentary executors be appointed executors dative to such deceased persons in manner hereinafter mentioned.

Letters of administration.

26. In all cases in which any deceased person shall by will or codicil have duly appointed any person to be his executor, the Master shall, upon the written application of such executor, forthwith grant letters of administration to him so soon as such will or codicil shall have been registered in the office of the Master; provided always that if it shall appear to the Master, or if any person by writing, lodged with the Master, shall object that any will or codicil by virtue whereof any person shall claim to be the testamentary executor of any person deceased is not in law sufficient to warrant and support such claim, then, and in every such case, letters of administration may be refused by the Master until the validity and legal effect of such will or codicil shall have been determined by the judgment of some competent court, or until such objection as aforesaid shall have been withdrawn by the person by whom the same was made or until such persons shall have had sufficient time to apply to such court as aforesaid, for an order restraining the issue of letters of administration; provided also, that letters of administration shall not be granted to any such executor† as aforesaid, who shall at the time of making such written application, be or reside beyond the limits of the Colony; and that, if the Master shall have reason to believe that any such last-mentioned executor, although he may at the time of making such application be within the Colony, will not remain within the Colony until he has finally liquidated and settled the estate to be administered by him, the Master may refuse to grant letters of administration to such executor until he shall find sufficient security for the due and faithful administration by him of such estate.

Letters of administration to executor appointed by will.

* See Ord. No. 15, 1905, sec. 9.

† As in *Gazette*.

Proceedings on failure of appointment of executors, or on death, incapacity or refusal to act.

27. When any person shall have died without having by any valid will or codicil appointed any person to be his executor, or where any person duly appointed to be the executor of any deceased person shall have predeceased him, or shall refuse or become incapacitated to act as such, or shall within such reasonable time as the Master shall deem sufficient, neglect or fail to obtain letters of administration, then and in every such case, the Master shall cause to be published in the *Gazette* and in such other manner as to him shall seem fit a notice, calling the surviving spouse (if any) the next-of-kin, legatees and creditors of the deceased to attend at his office at the time therein specified to see letters of administration granted to such person or persons as shall then be appointed by him, executor or executors to the estate of such deceased person; provided always, that when it shall appear to the Master necessary or expedient so to do, it shall be lawful for him in such notice to call such persons as aforesaid to attend before any resident magistrate at such time and place as may be appointed for the purpose of proposing some person or persons to be by such magistrate recommended to the Master as fit and proper to be by him appointed executor or executors. And the Master shall, at the meeting so to be holden at his office, or upon receiving the report of such resident magistrate, appoint such person or persons as to him shall seem fit and proper to be executor or executors of the estate of the deceased and shall grant letters of administration accordingly, unless it shall appear to him necessary or expedient to postpone such appointment and to call another or other such meeting or meetings as aforesaid; and provided also that when it shall appear to the satisfaction of the Master that the estate of any such deceased person as is hereinbefore mentioned is manifestly insolvent, then, and in every such case, it shall not be necessary for him to take any such *proceedings as aforesaid for the appointment of an executor or executors.

In case of insolvency of estate.

Competition for the office of executor dative.

28. In every case in which a competition shall take place for the office of executor dative, the surviving spouse, whom failing the next or some of the next-of-kin whom failing a creditor or creditors, whom failing a legatee or legatees, shall be preferred by the Master to the office of executor; provided always that nothing herein contained shall prevent any one or more of the above-mentioned classes of persons from being conjoined in the said office with one or more of any of the above-mentioned classes of persons; and that when it shall appear to the Master, or to the Supreme Court, or any judge thereof on reviewing the appointment of the Master that any good reason exists against the appointment of all or any of the above-mentioned persons or classes of persons as executor or executors, any such person or class of persons may be passed by and some other fit and proper person or persons may by the Master, or by such court or judge, be appointed executor or executors; and provided also that every such appointment so made by the Master, shall, on the application of any person

Review Master's appointment by court or judge.

* As in *Gazette*.

having an interest in such estate, be subject to be[†] reviewed, and confirmed or set aside by the Supreme Court or any judge thereof, and such court or judge by whom any such appointment shall be set aside, may appoint some other[‡] fit and proper person or persons to be executor or executors.

29. When it shall happen that any of the next-of-kin or creditors or legatees of any deceased person shall be minors, under the guardianship of any tutor duly appointed then and in every such case such tutor shall be entitled to be preferred to the office of executor dative under the provisions of the last preceding section in like manner in all respects as the minor whose tutor he is, would, if of full age, have been entitled to be preferred to that office under the provisions of the said section.

30. Nothing herein contained shall prevent any testamentary executor from assuming any other person or persons as executor or executors of the testator under and by virtue of any power for that purpose to him committed by such testator by his will or codicil; provided always that no person shall be entitled or qualified to act as assumed executor unless letters of administration shall have been granted to him as such during the lifetime of the executor testamentary by the Master, who shall grant the same on production to him of the will or codicil by which the assumption of such executor is authorized and of the deed by which such testamentary executor has assumed such person as executor. And every provision of this Proclamation and of every other law applicable or relating to or affecting executors shall be deemed and taken to be and shall apply and relate to and affect every such executor so assumed.

31. When by reason of any testamentary or assumed executor to whom letters of administration shall have been granted having died or become incapacitated to act as such or having been removed from his office by the decree of any competent court there shall not remain for the administration of the estate any executor whatever, or so many executors, either testamentary or assumed as by the provisions of the will or codicil by which such executors were appointed or permitted to be assumed, shall be required to form a quorum of executors, and when it shall happen that any executor dative, shall, after letters of administration have been granted to him, die, or become incapacitated, or be removed in manner aforesaid, then and in every such case, proceedings in order to the appointment of an executor in place of such executor so dying, or becoming incapacitated, or removed, shall be taken by the Master in like manner in all respects as hereinbefore provided by the provisions of the *twenty-seventh*, *twenty-eighth* and *twenty-ninth* sections of this Proclamation.

32. Letters of administration granted to any person as testamentary executor, shall at all times be subject to be revoked and annulled by the decree of the Supreme Court,

[†] Words in italics appear in *Gazette*; in Proc. 1900-1902, the word "or" is here given.

[‡] As in *Gazette*; left out in Proc. 1900-1902.

Appointment of tutors of minors where minors would have been entitled to appointment.

Assumption of executors under power contained in will.

Letters of administration to assumed executors.

Proceedings in case of death, incapacity, or removal of testamentary or assumed executors.

Revocation of letters of administration by decree of Court, or in some instances by Master.

on the proof to the satisfaction of such court, that the will or codicil, in respect of which, such letters have been granted to such person, is null, or has been revoked, either wholly or in so far as it relates to the nomination of such executor; and letters of administration granted to any person as executor dative, shall be at all times subject to be revoked and annulled by the Master, on production to him of any will or codicil by which any other person who shall then be legally capable and qualified and who shall consent to act as executor, has been legally nominated testamentary executor to the estate which such executor dative has been appointed to administer; provided always that if § the non-production of such will or codicil, prior to letters of administration having been granted to the executor dative has been owing to the fault or negligence of the person therein nominated testamentary executor such person shall be personally liable for, and may be compelled at the instance of the Master, or any person interested, to make good to the estate all expenses which have been incurred in respect of, and with reference to, the appointment of the executor dative.

Security for due administration.

33. Every executor dative, assumed executor or curator bonis shall, before he shall be permitted to enter on the administration of the estate, find security to the satisfaction of the Master for the due and faithful administration of the estate to which he has been appointed for such amount as in the circumstances of each particular case shall be reasonable.

Appointment by Master of executors to estates under £100.

34. If any person shall die, whose estate shall be unrepresented, and in so far as the same shall be situated within this Colony, shall appear to the Master to be under the value of one hundred pounds sterling, the Master may cause such estate to be administered and distributed in accordance with the provisions of the *sixty-eighth* and *sixty-ninth* sections of this Proclamation by an executor dative, to be by him summarily appointed for that purpose.

FOREIGN LETTERS OF ADMINISTRATION.

Operation of this part only with regard to letters granted in State specially proclaimed.

*35. The provisions of the *thirty-sixth*, *thirty-seventh* and *thirty-eighth* sections of this Proclamation shall come into force with regard to all letters of administration at any time granted in any State, as and from the date of, and during the period (if any), limited by a notice, which it shall be lawful for the Governor to publish in the *Gazette*, declaring such State to fall under the provisions of the said sections, and thereupon the said provisions shall continue in force, either until any period so limited as aforesaid, or any extension thereof by Proclamation in the *Gazette* shall have expired, or until a

§ As in *Gazette*; in Proc. 1900-1902, the word "is" is given.

* By Proc., Admn., No. 3 of 1902, Natal is now brought within the provisions of secs. 36, 37, and 38 of this Proclamation; by Govt. Notice No. 462 of 1902, the Orange River Colony; by Govt. Notice No. 480 of 1902, the Cape Colony; by Govt. Notice No. 622 of 1902, the United Kingdom; by Proc. (Admn.) No. 108 of 1905, Southern Rhodesia; by Proc. (Admn.) No. 40 of 1907, Swaziland. See also Order of his Majesty in Council, dated 16th February, 1903, applying the Colonial Probates Act, 1892 (Imperial), to the Transvaal.

further Proclamation shall be similarly published by the Governor declaring that the said provisions shall no longer apply to letters of administration granted in such State.

†36. Whenever letters of administration, granted in any State, shall be produced to and a copy thereof deposited with the Master by the person in whose favour such letters of administration have been granted, or his duly authorized attorney, such letters may be signed by the Master, and sealed with his seal of office, and shall thereupon be of like force and effect and have as full operation in this Colony with respect to, and the Master shall have the same control over the administration of the entire estate of the deceased here situate, as though the said letters had been letters of administration granted by the Master; provided however

(1) that the Master shall not sign and seal any such letters so produced, in case any letters of administration shall have been granted already by him in respect of the estate of any deceased person which shall be situate in this Colony;

(2) that before any such letters are signed and sealed, a certificate of death, and a duly certified copy of the will (if any) of the deceased, and an inventory of all property within this Colony known to belong to him, shall be lodged with the Master, and the same stamp fees of office duties and security shall be paid and given which would be required if the said letters had been letters dative granted by the Master;

(3) that in case the Master shall refuse to sign and seal any such letters of administration so produced, it shall be lawful for the person thereby authorized and empowered to act, after notice to the Master, to make application to the Supreme Court for relief, and thereupon the Supreme Court shall make such order as to justice shall appertain;

* (4) *that the person in whose favour such letters of administration have been granted may insert in the Gazette and in a newspaper published and circulating in this Colony an advertisement calling upon all creditors and persons interested ab intestato or otherwise to lodge with the Master the particulars of their claims and of their objections to the signing and sealing of such letters of administration within a period of three weeks and if within the said period no such claims or objections shall have been lodged or if such claims shall have been paid and proof of such payment shall be produced to the Master and it shall further appear that there are no minors resident in this Colony who are interested in the distribution of the estate then such letters of administration may be signed and sealed by the Master in manner hereinbefore provided without observance of the usual and customary forms and without his requiring security to be given: and if the Master shall then refuse to sign and seal such letters of administration the provisions of subsection (3) of this section shall apply. The Master shall*

Letters granted in other State on production to Master may be sealed and signed and given effect to in this Colony.

But no letters to be so sealed and signed if any letters already granted. Stamp fees, etc., to be the same as for letters issued by Master.

Jurisdiction of Supreme Court in case Master refuses to sign.

† See Ord. No. 15, 1905, sec. 2.

* Sub-sec. (4) added by Ord. No. 15 of 1905, sec. 4.

notify the proper officer of the court granting such letters of administration that he has signed and sealed the same without security being given and shall forward with such notification a certified copy of the inventory required to be lodged under sub-section (2) of this section.

Letters granted by British Consular Courts recognised.

37. Letters of administration lawfully granted by any British Consular Court shall be deemed and taken to be granted in a State to which the provisions of the last preceding section apply.

Evidence by copy of letters certified by Master, and provision for Master's certificate of right to administer estates here situate under letters produced.

38. A copy certified by the Master of the copy of any letters of administration deposited with him under the provisions of the *thirty-sixth* section of this Proclamation shall be admitted in evidence in all legal proceedings in this Colony, as though such certified copy were the original letters, and a certificate under the hand of the Master to the effect that he has in accordance with the said provisions signed and sealed any letters of administration authorizing and empowering any person to act thereunder, shall be admitted in all legal proceedings in this Colony as *prima facie* proof of the legal right and title of such person to administer so much of the estate of the deceased person named in such certificate as is situate in this Colony.

Definition of terms.

39. In the *thirty-fifth*, *thirty-sixth*, *thirty-seventh* and *thirty-eighth* sections of this Proclamation, the following terms shall bear the following meanings:—

“State.”

“State” shall include England, Scotland, Ireland and every British Colony and British Possession.

“Letters of administration.”

“Letters of Administration” shall include every document issued, or a copy of every such document, duly certified by any lawful and competent judicial or other public authority in any State, under and by which document any person or body corporate shall be authorized and empowered to act as the personal representative of any deceased person, or as executor or administrator, either testamentary or dative, either of the whole estate of any deceased person which shall be legally situate in such State, or so much of such estate so situate as consists of immovable, movable, real or personal property as the case may be.

“British Consular Court.”

“British Consular Court” means any British Court having jurisdiction under an Order in Council, made in pursuance of the Foreign Jurisdiction Acts, 1843 to 1878, or any of them, or any amendment thereof.

DUTIES OF EXECUTORS.

Inventory by executors.

40. Every executor shall, so soon as letters of administration shall have been granted to him in manner aforesaid, forthwith make an inventory showing the value of all property, goods and effects, movable and immovable, of what kind soever, belonging to the estate which he has been appointed to administer, and shall in like manner from time to time thereafter, and so soon as he shall find or know of any other such

† As in *Gazette*.

property, goods or effects belonging to such estate, and not contained in such first-mentioned inventory, make an additional inventory or inventories showing the value of all such last-mentioned property, goods and effects. And every such executor shall forthwith cause every such inventory, and additional inventory to be transmitted to the Master. And when any such additional inventory shall be so transmitted by any executor, dative, or assumed, he shall find such further security as the Master may require of him.

Transmission of inventory to Master.

41. If any person required and directed under and by virtue of the provisions of the *fortieth* section of this Proclamation to make, or cause to be made an inventory of any estate, goods, or effects shall wilfully make a false inventory thereof, every such offender shall, upon conviction, be liable to punishment by imprisonment with or without hard labour for any period not exceeding five years, or by a fine not exceeding five hundred pounds, or by both such imprisonment and such fine.

Penalty for false inventory.

42. When any executor shall fail to place any value upon the assets or any portion thereof, or shall place a value upon them which shall not meet with the approval of the Master, it shall be lawful for the Master to cause the value of such assets to be appraised by any impartial person or persons, and the value so ascertained shall be taken to be the true value of such assets for the purposes of this Proclamation.

Master may appoint appraiser to value assets.

43. If previously to letters of administration being granted by the Master to any executor for the administration of any estate, any person shall take upon himself to administer, distribute or in anywise dispose of such estate, or any part thereof, except in so far as may be authorized by a competent court, or by the Master, or may be absolutely necessary for the safe custody or preservation thereof, or for providing a suitable funeral for the deceased, or for the subsistence of the family or household or live stock left by the deceased; or if any person to whom letters of administration have been granted shall administer, distribute, or in anywise* dispose of any property or effects belonging to the estate of which he is the executor, and which shall not have been contained in the inventory or inventories of such estate lodged with the Master previously to the granting of the said letters of administration, or shall not be contained in any inventory or additional inventory made by him and transmitted by him to the Master in terms of the provisions of the *fortieth* section of this Proclamation, every such person shall thereupon become personally liable to pay to the creditors and legatees of the deceased all debts due by the deceased at the time of his death, or which have thereafter become due by his estate, and all legacies left by the deceased in so far as the proceeds and assets of such estate shall be insufficient for the full payment of such debts or legacies; provided always that when any person who shall be sued for the payment of any debt or legacy which he shall have rendered himself personally liable to pay in manner aforesaid, shall prove to the satisfaction of the court before which he shall be sued

Liability in certain cases for debts and legacies by persons who, previously to the granting of letters of administration, have intermeddled with estates, and by persons to whom letters have been granted in respect of property not contained in inventory.

* As in *Gazette*.

that the true amount and value of the property which has actually been unduly administered, distributed, or disposed of by him did not exceed a certain sum, and that his administration, distribution, or disposal of the same was not fraudulent, then, and in every such case, such person shall only be personally liable for so much of such sum as he shall fail to prove has been distributed or disposed of in such manner and for such purposes as by law the same ought to have been distributed or disposed of and for the amount of the costs by him incurred in and concerning such suit as well as for the amount of the taxed costs incurred in and concerning such suit by the plaintiff therein notwithstanding that by reason of such person's personal liability having been restricted in manner aforesaid such plaintiff shall not have recovered from such person any part of the debt or legacy sued for.

Duty of person in possession of assets of estate of deceased person.

44. Every person not being the executor of the estate of a deceased person duly appointed in this Colony who shall at the promulgation of this Proclamation or thereafter have or come into possession or custody of any property or asset belonging to such estate, shall forthwith either deliver such property or assets to the duly appointed executor (if any) then being in the Colony, or report the particulars thereof to the Master; and if such first-mentioned person shall fail to do so or shall part with any such property or asset to any person not authorized by the Master by letters of administration or other direction to receive the same he shall apart from any other liability he may incur thereby be liable for all dues payable to the Government in respect of such property or asset.

Public notice by executors to creditors and others to lodge their claims.

45. Every executor shall so soon as he shall have entered on the administration of the estate forthwith cause a notice to be published in the *Gazette* and in some newspaper published or circulating in the district in which the deceased ordinarily resided, calling upon all persons having claims due or not yet due as creditors against the deceased or his estate, to lodge the same with such executor within such period from the date of the publication thereof as shall be therein specified, not being less (save and except as in the *sixty-ninth* section of this Proclamation provided) than thirty days or more than three calendar months as in the particular circumstance of each case shall by the executor be deemed proper; and all claims which would be capable of proof in case of the insolvency of the estate shall be deemed to be claims of creditors for the purposes of this Proclamation.

Suspension of execution of judgments against deceased until expiration of period of notice. Order of court or of a judge for execution within six months after date of letters of administration.

46. It shall not be lawful for any person who shall have obtained the judgment of any court against any deceased person in his lifetime, or against his executor, in any suit or action commenced against such executor, or which having been pending against the deceased at the time of his death, shall thereafter have been continued against the executor of such person, to sue out or obtain any process in execution of any such judgment before the expiration of the period notified in the *Gazette* in manner hereinbefore provided; and it shall not be lawful for any such person as aforesaid to sue out or obtain any process in execution of any such judgment as aforesaid within six months from the time when letters of administration shall have been granted

to the executor against whom execution of such judgment is sought, without first obtaining an order from the Supreme Court, or some judge thereof, for the issue of such process.

47. On the expiration of the period notified in the *Gazette* in manner hereinbefore provided, every such executor as aforesaid shall forthwith proceed to rank according to their legal order of preference, all such claims of creditors against the deceased or his estate as have been lodged with him, or of the existence of which he shall have knowledge, and shall pay off and discharge the same so soon as the funds necessary for that purpose shall have been realised out of the estate. And if the proceeds of such estate shall be found to be insufficient for the payment of all the just and valid claims of creditors to which it is liable, the executor thereof shall be liable to pay to any person having any such just and valid claim, the amount which such person would have been entitled to receive in respect of such claim, if ranked according to the legal order of preference, in so far as such executor shall have within the said period last mentioned, or afterwards at any time when he knew of the existence of such claim, paid such amount to any person the payment of whose claim against the deceased or his estate, according to the legal order of preference, ought to have been postponed until such just and valid claim as aforesaid had been satisfied; reserving always to such executor recourse against the person to whom payment of his claim may have been improperly made; provided always that when such notice to creditors as aforesaid shall have been duly published as aforesaid, no creditor, claiming on the estate of any deceased person, who shall not have lodged his claim with the executor within such period as aforesaid, or thereafter before the distribution of the funds of the estate, shall in respect thereof be entitled to recover from any person having a just and valid claim as a creditor against such estate, restitution of any part of such funds which may have been paid to such person in satisfaction thereof, after the expiry of such period, and before the claim of the person seeking such restitution was lodged with the executor, although if lodged in due time, such last-mentioned claim would, according to the legal order of preference, have been preferent to that of the person to whom such payment had previously been made; nor shall such person have any claim against any executor in respect of any such distribution as aforesaid of the funds of any such estate made by him after the expiry of such period as aforesaid, and before the claim of such person shall have been known to such executor.

48. Every person by whom the funeral of any deceased person shall be performed, or caused to be performed, shall, for the amount of the expenses of such funeral, in so far as the same were suitable to the condition of the deceased, have a preference on the property and assets of the estate of the deceased, before any other debt or claim which may have been owing by deceased at the time of his death, or which may arise against his estate after his death.

49. Any executor may, if he think fit, require any person preferring any claim as a creditor against the estate of which he

Duties of executors after expiration of period for lodging claims.

Payment of debts.

Liability of executors in regard to preferent debts.

Preference on estate for funeral expenses.

Executor may require affidavit in support of claim.

is the executor, to substantiate such claim by an affidavit setting forth the details of such claim, with such particularity as the executor may reasonably require, and may refuse to recognize such claim until such affidavit has been delivered to him, and it shall be competent for any court by which any such claim shall be adjudged in favour of any claimant, to decline to grant such claimant his costs against the estate, in case such court shall deem that the information given by the claimant to the executor was insufficient; and that the executor acted with prudence and discretion in contesting such claim.

If estate insolvent.

50. If an executor shall, after inquiry, find that the estate is insolvent, he shall immediately take the necessary proceedings for having such estate placed under sequestration as insolvent, unless the creditors consent to receive a dividend in full satisfaction of their claims, and proof of such consent is produced to the Master.

Master may permit surviving spouse to take over estate at appraisement.

51. If one of two spouses married in community of property shall die intestate, or shall die testate and shall have made no provision to the contrary in the will, the Master may, if it shall appear to him that it will be for the benefit of the minor children (if any) of the deceased spouse to do so, permit the share of the joint estate belonging to such deceased spouse to be taken over by the survivor, at a valuation to be made by a sworn appraiser instead of being realised according to law; provided that no person having any lawful claim against the estate of such deceased spouse shall be delayed or defeated in obtaining payment of such claim by virtue of anything herein contained.

Executor to transmit claims of minors, lunatics and absent persons to Master.

52. If any executor in administering and distributing any estate shall find that any minor not having a lawful guardian, or tutor, or any lunatic not having a lawful curator, or any person absent from the Colony and not having a lawful representative within the same, has any valid right or claim to such estate, or any part thereof, such executor shall forthwith transmit to the Master a statement in writing, containing the name of such minor, lunatic or absent person, and specifying the nature and value of the property to which such minor, lunatic or absent person has such right or claim.

Executors to pay to Master money devolving upon minors, lunatics or absent persons.

53. If any executor shall, in administering and distributing any testate estate, find, that any sum of money has devolved upon or become due from such estate to any minor, lunatic or person absent from the Colony not having a guardian, tutor, curator or lawful representative within the same, such executor shall forthwith pay such money into the hands of the Master; provided

(a) that if the person from whose estate such money has devolved or become due, shall by will or deed have directed that the same shall be otherwise dealt with, nothing herein contained shall be taken to prevent such executor from carrying into effect the provisions of such will or deed;

(b) that the term executor shall be deemed to include administrator, unless, a contrary intention shall appear in the will or deed wherein the word executor occurs.

And every executor administering and distributing any intestate estate shall forthwith pay into the hands of the Master any sum

of money which has devolved upon or become due from such estate to any minor or lunatic, and any sum of money which has devolved upon or become due from such estate to any person absent from the Colony, and not having a lawful representative within the same; provided always, that nothing in this section contained shall be taken to limit any power possessed by the Supreme Court to order any such money to be paid by any executor, or by the Master to any person for any purpose.

54. Every executor shall administer and distribute the estate to which he is appointed executor according to law, and the provisions of any valid will, codicil or other testamentary instrument relating to such estate, and shall, so soon as may be after the expiration of the period notified in the *Gazette* in manner hereinbefore provided, and not later than six months from the day on which the letters of administration were issued to him (unless upon application to the Master upon sufficient cause shown to the satisfaction of the Master, further time be given from time to time for that purpose), frame and lodge with the Master a full and true account supported by vouchers of the administration and distribution of the said estate, and also a duplicate or fair and true copy of such account, and should such account not be the final account, it shall set forth all debts due to the estate and still outstanding, and all property and effects still unsold and unrealized, and the reasons why the same have not been collected or realized, as the case may be, and the executor shall, from time to time, as the Master may direct, render periodical accounts of his administration and distribution until the estate shall be finally liquidated, and should the executor fail to do so, he shall be liable to be summoned in terms of the next succeeding section.

55. As often as any executor shall fail to lodge with the Master the account mentioned in the last preceding section, the Master or any person having an interest in such estate, may, at any time after the expiration of six months, from the day on which the letters of administration were granted to such executor, summon him to show cause before the Supreme Court why such account has not been so lodged as aforesaid; provided that the Master or such other person as aforesaid, shall, not later than one month before suing out any such summons, apply by letter to the executor in default, requiring him to lodge his account on pain of being summoned to do so under this section; and, provided further, that any executor receiving any such application from the Master or such other person as aforesaid, may lay before the Master such grounds and reasons as he may be able to advance why he has not lodged his account, and the Master, should such grounds and reasons seem to him sufficient, may grant to such executor such an extension of time for the lodging of such account as he shall in the circumstances deem reasonable; reserving always the right of any person having an interest in such estate to bring in review before the Supreme Court or any judge thereof by motion, the decision of the Master under which any such extension is granted; and provided also, that any such executor so in default, if he shall fail to satisfy the Master that he ought to receive an extension of

Administration and distribution accounts.

Summons if account has not been lodged within six months.

Master may extend time on sufficient cause being shown.

On failure to satisfy Master, executor may appeal to Supreme Court.

time may apply to the Supreme Court or any judge thereof, by motion of which the Master and such other person as aforesaid shall get notice for an order granting to such executor an extension of time within which to lodge his account.

Master entitled to costs in certain cases where the Supreme Court overrules his decision.

56. Although the court or judge shall be of opinion that the grounds and reasons laid before the Master by any executor who shall be summoned to lodge his account as aforesaid were such as would have warranted the Master in granting an extension of time, the Master or other person at whose instance summons is issued shall nevertheless be entitled to his costs in case he shall before summoning the executor whose grounds and reasons the Master shall have overruled and declared insufficient have allowed such executor sufficient time for enabling him to apply to the Supreme Court or some judge thereof for such an order as aforesaid granting to such executor an extension of time.

Costs unless otherwise ordered by Supreme Court to be paid by executor in default.

57. The costs adjudged to the Master or such other person as aforesaid upon any summons sued out by him or on his behalf shall be payable by the executor in default in his individual capacity, and he shall not be at liberty to charge the same to the estate under his administration unless authorised so to do by the Supreme Court.

Remuneration of executors.

*58. Every executor shall, in respect of his administration, distribution and final settlement of any estate, be entitled to claim, receive or retain out of the assets of such estate, or from any person who as heir, legatee or creditor shall be entitled to the whole or any part of such estate, such remuneration as may have been fixed by the deceased, by will or deed, or otherwise a fair and reasonable compensation, to be assessed and taxed by the Master, subject to the review of the Supreme Court, upon the petition of such executor or of any person having an interest in such estate; provided always, that if any executor shall fail to lodge the account of his administration and distribution of the estate within six months from the date on which letters of administration were granted to him, and shall have no lawful and sufficient excuse for such failure, it shall be competent for the Master to disallow the whole or any portion of the fees which such executor might otherwise have been entitled to receive in respect of his administration of such estate.

Conditions under which survivor of two spouses married in community may transfer or mortgage land registered in his or her name.

59. It shall not be lawful for the survivor of two spouses who were married in community of property, to transfer any land belonging to the joint estate and unregistered in the name of such survivor, unless and until an account of the administration of such estate has been lodged with and accepted by the Master; nor shall it be lawful for the survivor, unless and until such account has been so filed and accepted, to mortgage any such land as aforesaid, except for the purpose of

(a) securing to the minor heirs of such deceased spouse the inheritance due to them in terms of the *sixty-third* section of this Proclamation; or

* See Master's Notice, 22nd April, 1903, (*Gazette*, 24th April, 1903), remuneration of executors.

(b) raising money in order to pay such inheritance into the hands of the Master ;
 provided that no transfer or bond allowed by this section shall be passed without the consent in writing of the Master.

60. In case the owner of any immovable property shall at his death have bequeathed a fiduciary, usufructuary, or other limited interest in such property, to any person, and shall have directed by his will that such property should devolve, after the expiration of such limited interest, upon any other person or persons, certain or uncertain, then the executor of such deceased owner shall upon or before framing any administration and distribution account of the estate either

Duties of executor with regard to property bequeathed with limited interest with eventual right to heir in remainder.

(a) transfer the property to the person immediately entitled to a limited interest therein, with an express reservation in such transfer of the rights of such last-mentioned person or persons ; or

(b) if the property is already registered in the name of the person entitled under the will to a limited interest only therein, obtain and transmit the title deed thereof to the Registrar of Deeds in order that such limitation of interest may be endorsed thereon ;

but nothing herein contained shall affect the right of any executor to sell any immovable property for the purpose of paying the debts of the deceased owner thereof. Nor shall the passing of transfer under this section be deemed to determine whether the interest bequeathed is a usufructuary or a fiduciary interest.

Every executor who shall fail to prove that he has used due diligence to comply with the terms of this section shall forfeit all claim to fees in respect of his administration of the estate, and shall in addition be liable to a fine not exceeding one hundred pounds sterling or in default of payment to imprisonment for a period not exceeding four months.

Penalty.

61. Any person in possession of a title deed required by an executor in order to comply with the provisions of the last preceding section who shall refuse to deliver or unreasonably delay the delivery of such deed to such executor shall be liable to a fine not exceeding ten pounds, and in addition to pay all reasonable costs to which the executor may be put in obtaining possession of such deed ; but the legal rights or position of such person shall not be affected by his delivery of such deed in terms of this section. And every executor shall so soon as such deed is no longer required for the purposes of complying with the preceding section of this Proclamation return it to the person from whom it was received, if but for this section such person would be entitled to possession thereof.

Penalty for refusing to deliver title deed to executor when required.

62. In case any person to whom a fiduciary, usufructuary or other limited interest has been bequeathed as in the *sixtieth* section of this Proclamation mentioned shall not renounce such bequest and yet shall refuse to accept transfer thereof in terms of the said section or in case it shall be impossible for the executor of the former owner of the said property to pass transfer thereof to any such person as aforesaid, by reason of the refusal of the said person to satisfy and pay any transfer or

Holder of limited interest compelled by motion to accept transfer.

other duty chargeable by law against such person, the said executor may apply to the Supreme Court on motion for an order compelling the said person to do all things and pay all duties and charges necessary to enable a transfer of the said property to be passed as required by the section aforesaid; and the said court may make such order upon the motion as in the circumstances it may deem meet.

Duties of surviving spouse appointed executor testamentary.

63. Every surviving spouse who has been appointed executor testamentary of his or her deceased spouse shall, so soon as the estate of the deceased has been administered and an account thereof framed according to law

(a) secure the inheritances ascertained by the said account to be due to the minor children or descendants of the deceased spouse by a bond duly registered in the Deeds Office made in favour of the Master and deposited with him; or

(b) pay the said inheritance into the hands of the Master;

provided that if the deceased spouse shall by will or deed have directed that the said inheritances shall be otherwise dealt with, nothing herein contained shall be taken to prevent the surviving spouse from carrying into effect the provisions of such will or deed.

Requisites of bond and how paid off.

64. Every bond passed in terms of the last preceding section shall be conditioned to secure payment of the said inheritances as and when the same become due, and shall hypothecate specially the immovable property (if any) of such surviving spouse or such of the said property as in the opinion of the Master shall be of value sufficient to secure the amount of the said inheritances, and generally all his or her goods and effects, or if there is no immovable property, or not sufficient in the opinion of the Master to secure payment of the said inheritances, such surviving spouse shall find two sureties to the satisfaction of the Master, who shall bind themselves as joint principal debtors for the due payment of the said inheritances renouncing the usual exceptions. Should any one or more of the said inheritances be duly paid off, the Master shall on proof of the fact of due payment release from the operation of the bond aforesaid, such portion of the said landed property as he may see fit; provided that there remain under the operation of the said bond sufficient property in the opinion of the Master to secure the inheritances still unpaid.

Executor's account not to be accepted until sections sixty and sixty-three complied with.

65. The Master shall not accept any administration and distribution account tendered by any executor if the provisions of the *sixtieth* or *sixty-third* sections of this Proclamation have not been duly complied with, nor shall the transmission of any account to the Master by any executor before such compliance be taken to be such a lodging of the said account as is required by law.

When Master to furnish Registrar of Deeds with return containing certain particulars in respect of immovable property.

66. The Master shall from time to time furnish the Registrar of Deeds with a return, giving the name of every person married in community of property with regard to whom, or to whose estate an inventory has been filed showing that such person had at the time of his or her death an interest in any immovable property registered in the name of his or her surviving spouse. Such return shall embody all material information

respecting such property, and the interest therein of the deceased which is contained in the inventory lodged with the Master, and in the will, if any, of the deceased.

67. No omission to render any such return as is by the last preceding section of this Proclamation required no rendering of an incomplete return, and no transfer or mortgage bond *bonâ fide* passed by the Registrar of Deeds against the provisions of the *fifty-ninth* section of this Proclamation, and no error or omission in any bond accepted by the Master to secure the inheritances of minor children, and no release from or cancellation of any such bond *bonâ fide* made by the Master shall subject the Government, the Master, or the Registrar to any liability in respect of damage sustained by any person in consequence of such omission, return, transfer, mortgage, acceptance, release, or cancellation.

Government, the Master and Registrar exempt from liability in certain cases.

ESTATES UNDER £100.

*68. In all cases in which it shall appear from the death notice or inventory, filed in respect of the estate of any deceased person, and from such other information as the Master may call for, that the value of the assets of such estate does not exceed *two hundred*† pounds, it shall be lawful for the Master, in the case of an intestate estate (or in the case of a testate estate, in which the executor testamentary may be unable or unwilling to act), summarily, and without observance of the usual and customary forms, to appoint an executor dative to administer the estate of such deceased person.

When Master may summarily appoint executor dative.

69. Any executor so appointed as aforesaid shall administer such estate in terms of the provisions of this Proclamation; provided always that it shall be lawful for the Master at any time to direct

Master may fix time for filing claims and account.

- (a) that such estate is to be administered within a less time than six months;
- (b) that the advertisement calling upon creditors to file their claims, is to be inserted once only in the *Gazette*, and in any newspaper published and circulating in this Colony, and that all claims are to be filed within a period (not being less than fourteen days, or more than three months) fixed by the Master, and notified in such advertisement;
- (c) that the administration and distribution account in such estate is to be filed within a period (not being less than fourteen days) after the last date fixed for the sending in of claims.

ESTATES OF NATIVES NOT LAWFULLY MARRIED.

70. If any native who shall not during his lifetime have contracted a lawful marriage, or who, being unmarried, shall not be the offspring of parents lawfully married, shall die intestate, his estate shall be administered and distributed according to the customs and usages of the tribe or people to which he belonged; and if any controversies or questions shall arise among his relatives, or reputed relatives, regarding

When estate of native to be dealt with according to usage of his tribe.

* See Ord. No. 15, 1905, sec. 3.

† Words in italics substituted by Ord. No. 15 of 1905, sec. 5.

the distribution of the property left by him, such controversies or questions shall be determined in the speediest and least expensive manner, consistent with real and substantial justice according to native usages and customs by the Commissioner for Natives of the district in which the deceased ordinarily resided at the time of his death, who shall call or summon the parties concerned before him, and take and record evidence of such native usages and customs, which evidence he may supplement from his own knowledge; and every decision of a Commissioner for Natives under this section shall be subject to an appeal to the Supreme Court at the instance of any person alleging an interest in the distribution of such property.

Letters of administration not necessary unless persons interested so desire.

71. Letters of administration from the Master shall not be necessary for, nor shall the Master be called upon to interfere in, the administration and distribution of the estate of any such native, unless the Commissioner for Natives shall report that it is the desire of the persons concerned in the estate, according to native usages and customs, that an executor dative should be appointed.

Meaning of the word "native."

72. For the purpose of the last two preceding sections, the word "native" shall mean and include any person belonging to any of the aboriginal races or tribes of Africa south of the Equator, or any person, one of whose parents belongs to any such race or tribe.

PART III.

ESTATES OF MINORS AND ABSENT PERSONS.

Tutors and Curators.

Appointment by father or mother only of tutors to minors.

73. It shall not be lawful for any person except the father of any minor, or the mother of any minor whose father is dead or has abandoned the minor, by any will or other deed to nominate and appoint any tutor or tutors to administer and manage the estate, or to take care of the person of such minor; provided always that nothing herein contained shall prevent any person who shall give or bequeath any property to any person, from appointing any curator or curators to administer and manage such property during the minority, or during the continuance of the insanity of the person to whom the same shall be given or bequeathed, in like manner and as fully in all respects, as the same might lawfully have been done prior to the taking effect of this Proclamation; and all curators so appointed shall be called curators nominate.

Curators nominate.

Tutors testamentary.

74. All tutors nominated and appointed by fathers or mothers in manner aforesaid to their minor children shall be called tutors testamentary, whether such tutors shall have been nominated and appointed by wills, or by any other deeds duly executed by such fathers or mothers; and no tutor testamentary shall assume or enter upon the administration or management of the estate or property of any minor, except in so far as it may be necessary for preservation and safe custody of the same

until letters of confirmation shall have been granted to him by the Master in the form contained in the Schedule "C" to this Proclamation.

Confirmation of tutors testamentary by Master.

75. The Master shall on application in writing being made to him for that purpose, grant letters of confirmation as tutor testamentary to every person who shall have been lawfully nominated and appointed tutor testamentary to any minor by any valid will or deed; and whenever it shall come to the knowledge of the Master that any person who has been nominated tutor testamentary by any valid will or deed to any minor possessed of property has not applied for letters of confirmation, the Master shall, by writing, require of such person to inform him whether he is willing to act as such tutor testamentary, and if he shall consent so to do, shall grant him letters of confirmation accordingly. Provided always that letters of confirmation as tutor testamentary shall not in any case be granted to any person who shall at the time be by law incapacitated or disqualified to hold the office of tutor; and that the second proviso in the *twenty-sixth* section of this Proclamation shall *mutatis mutandis* apply to the appointment of tutors testamentary.

Mode of granting letters of confirmation.

76. No curator nominate shall assume or enter upon the administration or management of any estate or property, except in so far as may be necessary for the preservation and safe custody of the same, until letters of confirmation shall have been granted to him by the Master; and in order to the granting of such letters of confirmation, proceedings shall be taken by any such person and by the Master in like manner in all respects, as is provided by the last preceding section of this Proclamation, as to the granting of letters of confirmation to tutors testamentary, and such letters shall be in the form contained in Schedule "D" to this Proclamation.

Letters of confirmation to curators nominate.

77. The Supreme Court, or any judge thereof, on the application of the Master, or of any relation, or of any person having an interest in the due administration of the estate or property of any minor in every case in which prior to the taking effect of this Proclamation, any tutor testamentary might by law have been required to give security *rem pupilli salvam fore* may make an order that letters of confirmation shall not be granted to any tutor testamentary or curator nominate as aforesaid, until he shall have found security to the satisfaction of the Master to such an amount as in the circumstances of each particular case shall be reasonable for the due and faithful administration and management of such estate or property.

Security *rem pupilli salvam fore* by curators and tutors nominate in like manner as before this Proclamation.

78. In every case in which it shall come to the knowledge of the Master that any estate or property within this Colony has devolved on, or come to belong to any minor being within the Colony, and not being at the time under the natural guardianship of his father or mother or of a tutor testamentary duly confirmed, the Master, except when it shall be known to him that a tutor testamentary has been duly nominated and appointed to such minor by any valid will or deed (in which

Appointment of tutors dative by Master.

Publication of notice.

case he shall proceed in manner for that purpose provided by the *seventy-fifth* section of this Proclamation) shall cause to be published in the *Gazette* and in such other manner as to him shall seem fit, a notice calling on the relations of the minor, both paternal and maternal to attend at his office at the time therein specified, to see letters of confirmation granted to such person or persons as shall be appointed by him tutor or tutors dative of such minor; provided always that when it shall appear to the Master expedient so to do, it shall be lawful for him in such notice to call on the relatives of such minor, both paternal and maternal, to attend before any Resident Magistrate at such time and place as he may appoint for the purpose of stating any objections which may exist to any of the next-of-kin or other person being appointed tutor dative, or of proposing some person or persons, to be by such magistrate reported to the Master as fit and proper, to be by him appointed tutor or tutors dative. And the Master shall at the meeting, so to be holden at his office, or upon receiving the report of such resident magistrate, appoint such person or persons as to him shall seem fit and proper to be the tutor or tutors dative of such minor, and shall grant to him, or them, letters of confirmation as such, unless it shall appear to him necessary or expedient to postpone such appointment and to call another meeting; and provided also that when any such minor shall not be possessed of, or have claim to any other estate or property, except such as shall have been given or bequeathed to such minor, by some person who has duly appointed a curator or curators nominate, to administer and manage the same during the minority of such minor, or except some estate or property paid over to, and in the hands of, the Master under the *fifty-third* section of this Proclamation, it shall not be necessary, though it shall in all cases be competent, for the Master to take any such proceedings as aforesaid for the appointment of a tutor dative.

Review of Master's appointment.

79. Every such appointment made by the Master, shall, on the application of any of the relations of, or of the curator nominate of any estate or property belonging to such minor, be subject to be reviewed and confirmed, or set aside by the Supreme Court, or any judge thereof, and such court or judge, by whom any such appointment shall be set aside, shall, and may appoint some other fit and proper person or persons to be the tutor or tutors dative of such minor.

Assumption under power in will or deed of other persons by tutors testamentary and curators nominate.

80. Nothing herein contained shall prevent any tutor testamentary of any minor, or curator nominate of any estate, from assuming respectively any other person as tutor of such minor or curator of such estate, under and by virtue of any power for that purpose to him committed by the will of, or any other deed duly executed by the person, by whom such tutor testamentary or curator nominate shall have been appointed; provided always, that no person shall be entitled or qualified to act as assumed tutor or curator unless letters of confirmation shall have been granted to him, as such during the lifetime of the tutor testamentary or curator nominate, by the Master, who shall

Confirmation by Master of assumed tutor or curator.

grant the same on production to him of the will or other deed, by which the assumption of such tutor or curator is authorized, and of the deed by which such tutor testamentary or curator nominate, has assumed such person as tutor or curator. And every provision of this Proclamation, and of every other law applicable, or relating to, or affecting tutors or curators dative, shall apply to every such tutor or curator so assumed respectively.

81. When by reason of any tutor of any minor, either testamentary or assumed, or of any curator of any estate, either nominate or assumed, to whom letters of confirmation shall have been granted, having died or become incapacitated to act as such, or having been removed from his office by any competent court, there shall not remain for the guardianship of such minor, or for the administration or management of such estate respectively, any tutor or curator whatever, or so many tutors, either testamentary or assumed, or curators nominate or assumed, as by the provisions of the will or deed, by which such tutors or curators were respectively appointed, or permitted to be assumed, shall be required to form a quorum of tutors, or curators, for the guardianship of such minor, or for the administration and management of such estate respectively, and when it shall happen that any tutor dative, shall, after letters of confirmation have been granted to him, die, or become incapacitated, or be removed in manner aforesaid, then, and in every such case, proceedings in order to the appointment of a tutor dative, in place of the person so dying, or becoming incapacitated, or removed, shall be taken by the Master, in like manner, and in all respects, as is hereinbefore provided by the provisions of the *seventy-eighth* section of this Proclamation.

Proceedings in case of death, incapacity, or removal of tutors or curators.

82. Letters of confirmation granted to any person as tutor testamentary, or as curator nominate of the estate of any minor, shall be at all times subject to be revoked and annulled by the Supreme Court, or any judge thereof, on proof to the satisfaction of such court or judge, that the will or deed in respect of which such letters have been granted to such person is null, or has been revoked either wholly, or in so far as relates to the appointment of such tutor or curator; and letters of confirmation granted to any person as tutor dative, shall be at all times subject to be revoked and annulled by the Master, on production to him of any valid will or deed, by which any other person who shall then be legally capable and qualified, and who shall consent to act as tutor, has been legally appointed tutor testamentary of the minor, to whom such tutor dative had been appointed; provided always, that if the non-production of such will or deed, prior to letters of confirmation having been granted to the tutor dative, has been owing to the fault or negligence of the person therein appointed tutor testamentary, such person shall be personally liable for, and may be compelled by the Master, or any person related to the minor, to pay to the minor's estate, and account for all expenses, which have been incurred in respect of, and with reference to, the appointment of the tutor dative.

Revocation of letters of confirmation by Supreme Court; and as to tutors dative by Master on production of a valid deed appointing a tutor testamentary.

Appointment of curator dative of property belonging to absent persons not having a legal representative in the Colony.

83. In every case in which it shall come to the knowledge of the Master, that in consequence of the death of any person, any estate or property has devolved on, or come to belong to any person absent from this Colony, and not having a legal representative within the same, the Master shall cause to be published in the *Gazette*, and in such other manner as to him shall seem fit, a notice calling on all whom it may concern to attend before him at the time therein specified, to see letters of confirmation granted to such person, as shall then be appointed by him curator dative of the estate or property of such absent person; and the Master shall at the meeting so to be holden before him appoint some fit and proper person to be such curator dative as aforesaid; provided always that when the only property known by the Master to belong to any such absent person, shall consist of a sum or sums of money due and payable to him by the executor of any deceased person, or by the trustee of any insolvent estate, it shall not be necessary for the Master to take any such proceedings as aforesaid; but the Master may, pursuant to the *fifty-third* section of this Proclamation, demand, recover, and receive payment of all such sums of money, to be after the same, are so received by him, disposed of in manner hereinafter provided.

Appointment of curator *ad litem* by Supreme Court or judge, and of curator *bonis* by Master, subject to review by the court or judge.

84. Nothing herein contained shall prevent the Supreme Court, or any judge thereof, from appointing a curator *ad litem* to any person in every case and in the same manner in all respects in which such appointment might by law have been made by such court if this Proclamation had never been issued. And in all cases when the same may be necessary or expedient, the Master may appoint a curator *bonis* to take the custody and charge of any estate or property, until in order to the due administration and management of the same, letters of confirmation shall be granted to some person as tutor, testamentary or dative, or as curator, nominate or dative, in manner hereinbefore provided. And every such appointment as curator *bonis* so made by the Master shall on the application of any person having an interest in such estate be subject to be reviewed and confirmed, or set aside, by the Supreme Court or any judge thereof; and such court or judge by whom any such appointment shall be set aside, shall and may appoint some other fit and proper person to be curator *bonis*.

Security for due administration by tutors and curators.

85. Every tutor dative or assumed, and every curator dative, and curator *bonis*, who shall be appointed by the Master or any court or judge to administer the estate or property of any minor or absent person, shall, before he shall be permitted to enter on the administration of such estate or property, find security to the satisfaction of the Master to such amount as in the circumstances of each particular case, shall be reasonable for the due and faithful administration and management of such estate and property.

Disqualifications of persons as tutors or curators.

86. Every person shall be deemed incapacitated and disqualified to hold, and shall be incapable of holding, the office of tutor, either testamentary or dative, or of curator either nominate or dative, in every case, and for every cause, in and

for which any person appointed tutor testamentary, would previously to the taking effect of this Proclamation have been incapable of holding the office of tutor testamentary.

87. Every tutor, either testamentary or dative, and every curator, either nominate or dative, whose estate shall be placed under sequestration as insolvent, shall cease to exercise or hold, and shall thereupon be deemed to have been removed, and shall, *ipso facto*, be removed from his office as tutor or curator aforesaid so soon as the final order for such sequestration has been made, but the removal of such tutor or curator shall not relieve him from any liability or responsibility attaching to him at the time of his removal.

Removal *ipso facto* of insolvent tutors and curators.

88. Every executor, tutor or curator shall be liable to be suspended or removed from his office by order of the Supreme Court or any judge thereof, if such court or judge shall be satisfied on motion, that by reason of absence from the Colony, other avocations, failing health, or other sufficient cause, the interests of the estate under his care would be furthered by such suspension or removal; provided that in every case of suspension the court or judge may substitute some fit and proper person to act during the suspension of such executor, tutor or curator, in his place subject to such conditions as to the giving of security and the conduct and administration of the estate as the said court or judge may deem it just to impose.

Removal and suspension for cause of executors, tutors, and curators.

DUTIES OF TUTORS AND CURATORS.

89. All tutors, either testamentary or dative, and all curators, either nominate or dative, shall within thirty days after entering upon the administration of their office, make, or cause to be made, and shall subscribe an inventory of all property, goods, effects movable and immovable forming part or belonging to the estates or persons under their guardianship; and every such tutor and curator shall thereafter from time to time, and so soon as any such property, goods or effects as aforesaid, shall come into his possession or to his knowledge make in like manner and form as aforesaid an additional inventory thereof; and every such tutor or curator shall respectively forthwith transmit all such inventories to the Master.

Inventory within thirty days by tutors and curators.

90. Every tutor or curator who shall fail to make up and transmit any such inventory in manner aforesaid, and who shall have no lawful and sufficient excuse for such failure, shall, by reason thereof, and in addition to every other liability, consequence, and penalty, which he shall thereby by law subject himself to and incur, be liable to a fine not exceeding twenty-five pounds sterling.

Penalties on failure of tutors and curators to make and transmit inventory.

91. If any tutor or curator, required and directed under and by virtue of the *eighty-ninth* section of this Proclamation, to make or cause to be made an inventory of any estate, goods, or effects, shall wilfully make a false inventory thereof, every such offender shall upon conviction be liable to punishment by imprisonment, with or without hard labour, for any period not exceeding five years, or by a fine not exceeding five hundred pounds sterling, or by both such imprisonment and such fine.

Penalty on conviction of tutor or curator for making false inventory.

Duties and liabilities of tutors and curators after confirmation.

92. When letters of confirmation shall have been granted to any tutor, either testamentary or dative, or to any curator, either nominate or dative, every such tutor shall in all respects and for all intents and purposes, and every such curator shall, in so far as relates to the particular estate or property which has been placed under his guardianship, have every power, right and privilege, and shall do and cause to be done, every act, matter and thing touching and concerning the inventorisation, administration and management of the estate or property under his guardianship, and every such tutor or curator and his estate, shall in respect and by reason of every act, matter or thing done or omitted to be done by him, incur and be subject to every liability, obligation and penalty, which by any law in force prior to the taking effect of this Proclamation, any tutor testamentary would then respectively have had or have been directed or required to do, and which he and his estate would then in respect and by reason of any such act, matter or thing done or omitted to be done by him, have incurred, or been subject to ; provided always that nothing herein contained shall give any curator, nominate or dative, any power or authority as to the maintenance, education or custody of the person of any minor, except in so far as the same may have been specially given and committed to him by the decree or order of any competent court or judge ; and provided also that every tutor testamentary and curator nominate shall in the discharge of such their office and in the administration of the estate and property respectively under their guardianship, conform to and obey every lawful direction touching and concerning the same which shall have been given by the person by whom such tutor or curator shall have been appointed, in the will or deed by which such appointment was made, or in any other writing duly executed by such person.

Powers of curators nominate and tutors dative as to maintenance, etc., defined by order of court or judge.

Obligation of tutors testamentary and curators nominate to conform to directions in deed of appointment.

Prohibition of re-marriage of surviving parent till minors' shares have been secured except where estate under one hundred pounds.

*93. (1) *Whenever any person who is a widower or widow and the parent of a minor child entitled to claim from such person any inheritance from the estate of such person's deceased spouse shall intend to marry again such person shall (whether the marriage be by special licence or after publication of banns) obtain a certificate from and under the hand of the Master to the following effect:—*

(a) *If the estate of the deceased spouse or the joint estate of the deceased spouse and the surviving parent is of the value of one hundred pounds and upwards a certificate that the amount of inheritance due to such minor child aforesaid from and out of the estate aforesaid has been paid into the Guardians' Fund or otherwise secured.*

(b) *If any such estate is in value under one hundred pounds a certificate stating such fact.*

(2) *Every such certificate shall be delivered to the magistrate or minister of religion before whom such marriage is intended to be solemnized.*

* This section was substituted by Ord. No. 15 of 1905, sec. 8.

(3) Any such person as is mentioned in sub-section (1) who shall marry again without obtaining such certificate as is required by such sub-section shall forfeit at the instance of the Master or of such child aforesaid when he or she attains the age of twenty-one years a sum equal to one-fourth of such person's share in the joint estate of such person and the deceased spouse aforesaid for the benefit of any such child and shall in addition incur a fine not exceeding one hundred pounds.

(4) Every magistrate or minister of religion who shall solemnize any such marriage as is in this section mentioned unless there has been first delivered to him a certificate as therein mentioned shall in addition to any other liability incur a fine not exceeding five hundred pounds.

94. No tutor, either testamentary or dative, and no curator, either nominate or dative, or curator bonis, shall sell, alienate or mortgage any immovable property belonging to any minor or forming part of any estate under the guardianship of such tutor or curator, unless the Supreme Court or any judge thereof shall have authorized such sale, alienation or mortgage, or unless the person by whom any such tutor testamentary or curator nominate shall have been appointed shall have directed such sale, alienation or mortgage to be made.

Prohibition of alienation of immovable property by tutor or curator, except by order of court or of a judge, or by direction in deed of appointment.

*95. Every tutor dative and every curator dative or curator bonis shall forthwith pay over to the Master all moneys belonging to the person or estate under his guardianship so soon as the same shall be received by or come into the possession of such tutor or curator, except in so far as the same may be required for the instant payment of debts due by such estate or for the immediate maintenance of such person; and if any such tutor or curator shall without any lawful and sufficient excuse retain, and fail to pay over to the Master any such moneys as it is herein directed shall be paid over to the Master, every such tutor or curator shall be liable to pay to, and for the benefit of, the person or estate to whom or which such money belongs, interest on the same at the rate of twelve per cent. per annum for the whole period during which such money shall be so improperly retained and shall not be paid over to the Master; and shall be liable to be removed from his office of tutor or curator by the decree of any competent court if it shall appear expedient to such court so to do; and whenever it shall come to the knowledge of the Master that any such money has been so retained, and not paid over to him by any such tutor or curator, he may forthwith institute an action against such tutor or curator in order to recover payment thereof, and of the above-mentioned penal interest due thereon.

Payment to Master by tutors dative and curators dative and curators bonis of all moneys, except as far as required for instant payment of debts.

Penalty interest at 12 per cent. for the period during which such money has been improperly retained.

Action by Master to recover amount with penal interest.

96. Any tutor testamentary or curator nominate to whom it shall seem expedient so to do, except where the person by whom such tutor or curator has been appointed, shall have directed that the same shall not be done, may pay over to the Master any money

Liberty to tutor testamentary or curator nominate to pay moneys in their possession to Master.

* See Ord. No. 15, 1905, sec. 9.

belonging to the person or estate under the guardianship of such tutor or curator, and which by law such tutor or curator might lend out at interest.

Accounts of administration by tutors and curators.

97. Every tutor, either testamentary or dative, and every curator, either nominate or dative, and every curator bonis shall on or before the fifteenth day of February in every year lodge with the Master a just, true and exact account of his administration of the estate or property under his guardianship up to the 31st day of December preceding, and also a duplicate, or otherwise a fair and true copy of such account; and if any such tutor or curator shall fail to lodge such account in manner aforesaid, and shall have no lawful and sufficient excuse for such failure, it shall be competent for the Master to disallow the whole or any portion of the fees which such tutor or curator might otherwise have been entitled to receive in respect of his administration of such estate during the year preceding the said 31st day of December; provided always that the survivor of two spouses whom the predeceasing spouse shall, by will or other lawful instrument, have appointed the tutor of his or her minor children, and the administrator of the joint estate of such spouses during the minority of such children shall not in any case be required to lodge any such annual account in manner aforesaid anything to the contrary herein contained notwithstanding.

Penalty on failure of due lodging of account.

Exception in favour of surviving spouse administering the joint estate.

Master may sue every tutor and curator who shall fail to lodge account within prescribed time.

98. It shall be lawful for the Master to summon any tutor, whether testamentary or dative, and any curator, whether nominate* or dative, and any curator bonis, to show cause why any account which under the last preceding section ought to have been lodged with the Master has not been lodged, and the provisions of the *fifty-fifth*, *fifty-sixth* and *fifty-seventh* sections of this Proclamation shall *mutatis mutandis* apply to all proceedings taken by the Master in pursuance of this section.

Compensation of tutors and curators.

99. Every tutor, either testamentary or dative, and every curator, either nominate or dative, shall in respect of his administration and management of any estate be entitled to claim, receive, or retain out of the assets of such estate a reasonable compensation for his care and diligence in the said administration, to be assessed and taxed by the Master, subject to the review of the Supreme Court, or any judge thereof, upon the petition of any such tutor or curator, or of any person having an interest in the said estate.

†THE GUARDIANS' FUND.

The Guardians' Fund.

100. All moneys paid to the Master by the Treasury on account of moneys received by the Government of the late South African Republic from the then Orphan Master, and all moneys paid to the Master under the provisions of the *fifty-third*, *sixty-third*, *eighty-third*, *ninety-fifth* and *ninety-sixth* sections of this Proclamation, and of section *one hundred and twenty-eight* of the Insolvency Law No. 13 of 1895, shall form and become part of the fund heretofore and hereafter to be known in law as "The Guardians' Fund"; and whenever any such money shall be received by the Master he shall open an account in the books of the said fund with the person to whom

* As in *Gazette*.

† See Govt. Notice No. 1225 of 1906 (*Gazette*, 23/11/06) establishing Investment Board.

or the estate to which such money belongs; provided that if it be not known to whom any such money belongs, or if in the case of minor heirs it is more convenient, the account may be opened in the name of the estate from which such money is derived.

101. Interest shall be allowed on every sum of money so received by the Master for account of any minor or lunatic from the first day of the second month after such money has been received, and until the date on which such minor or lunatic shall become entitled by law to draw the capital and no longer; provided that on the first day of January in each year the interest that has become due on any moneys as aforesaid shall be added to the capital in the books of the Guardians' Fund, and in case such interest is not drawn by the person entitled thereto previous to the first day of January following, interest shall be allowed on the accumulated sum.

Interest on moneys of minors and lunatics.

102. The rate of interest for the purposes of the last preceding section shall be such as the Governor may from time to time determine, provided that it be not less than three-and-one-half per centum per annum, and that if it be at any time reduced, at least six months' notice shall be given before such reduction shall take effect.

Rate of interest.

*103. All moneys paid to the Master under the provisions of any law for the purpose of being placed to the credit of the Guardians' Fund, shall be paid into the bank with which the general account of the Government is kept, to the credit of a separate account to be styled "The Guardians' Fund Deposit Account", and the Master may from time to time withdraw any part of such moneys by cheques or drafts, signed by himself, and drawn in accordance with such financial regulations as the Governor may have approved.

Payment into and withdrawal from bank with which the general account of the Government is kept of Guardians' Fund money.

104. It shall be lawful for the Master to pay any sum of money which is placed to the credit of any person, or of any estate to the person by law entitled to demand and receive the same, and also to pay to any tutor or curator of any minor, lunatic, insane or absent person, or of any estate, the whole or any part of such sum of money as in the books aforesaid shall at the time be placed to the credit of such minor, lunatic, insane or absent person of such estate as aforesaid, and as such tutor or curator is by law authorized or required to expend or dispose of for any purpose concerning, touching or in respect of, or with reference to, the person or estate under the guardianship of such tutor or curator; and when it shall appear to the Master that it is either unnecessary or illegal for such tutor or curator to expend or dispose of any such sum of money for the purpose for which it is alleged that the same is to be appropriated, it shall be lawful for the Master to refuse, or to suspend making such payment until the Supreme Court, or some judge thereof, shall have made an order directing such payment to be made; *† provided always that the Master may in consultation with the tutor or natural guardian of any minor invest the whole or any portion of any moneys paid into the Guardians' Fund to the credit of such minor under the provisions of the fifty-third, sixty-third, ninety-fifth or ninety-sixth sections of this*

Master to pay moneys placed to the credit of persons or estates to persons entitled to receive the same, or to tutors or curators.

Master may invest moneys of minors paid into Guardians' Fund in purchase of immovable property.

* See Act No. 14 of 1907, sec. 17.

† Words in italics added by Ord. No. 15 of 1905, sec. 10.

Proclamation in the purchase of immovable property in this Colony to be transferred into the name of such minor.

Master's powers as to sums under £100 credited to minors and lunatics.

105. In any case in which the total amount standing to the credit of any minor or lunatic in the Guardians' Fund does not exceed one hundred pounds, it shall be competent for the Master, if after careful inquiry it shall appear to him to be for the interest of such minor or lunatic to do so, to pay and apply the whole, or any part of such amount, for the maintenance, education or other benefit of such minor or lunatic; provided always that nothing herein or in the last preceding section contained shall authorize the Master to disregard or act contrary to the terms of any will or other deed under the provisions of which such amount shall have been received.

List of moneys belonging to absent or unknown heirs to be published annually.

106. The Master shall, in the month of April in each year, cause to be drawn up a list of all amounts standing in the books of the Guardians' Fund to the credit of any person unknown or not residing, and not having any known legal representative in this Colony, and shall cause the same to be inserted in the *Gazette*, and shall forthwith transmit two or more copies thereof to the Attorney-General, who may cause the said list, or any portion thereof, to be published in such manner as shall be deemed most expedient, in any country or countries to which any person or persons interested may be supposed to belong; and in the said advertisements all persons shall be invited to submit their claims to the Master; provided that no such amount being less than ten pounds need be advertised more than twice.

Lapse to the Crown of moneys unclaimed for forty years.

107. When any money which has been placed to the credit of any person or estate in the Guardians' Fund shall remain unclaimed by any person having a just and lawful right thereto, for a period of forty years from the date when the same was paid into the said fund, then such money shall lapse and be forfeited to the Crown, and a draft for the amount thereof shall be passed by the Master accordingly to the Colonial Treasury.

Investment of moneys to the credit of the Guardians' Fund.

108. The Master shall from time to time, and so soon as he shall find opportunity to do so, invest on mortgage of immovable property, or in any stock, debentures or other securities which may be issued by the Government of this Colony, and be charged upon the public revenue thereof, all such moneys standing to the credit of the Guardians' Fund as shall not be required to meet the current expenditure of the said fund; provided that no such investment shall be made by the Master without first consulting thereupon with two advisers, who shall be from time to time appointed for that purpose by the Governor, or in the event of both or either of them refusing consent, unless he shall have applied to and obtained from the Supreme Court, or any judge thereof, an order of such court or judge authorizing him to make such loan; and provided also that it shall not be lawful for any loan on mortgage to be made to or in favour of the Master or either of his said advisers.

‡ As in *Gazette*.

109. All bonds for money invested on mortgage shall be made payable to the Master of the Supreme Court administering the Guardians' Fund, and it shall be lawful for the Master to cede and assign, or to demand, enforce and receive, payment of any such bond and of the interest due thereon.

Bonds to be payable to the Guardians' Fund.

110. So soon after the first day of January as may be convenient in each year, the books and securities of the Guardians' Fund shall be examined by the Auditor-General and the controller of the Treasury, hereinafter called the examiners, who may call to their aid such person or persons as the Attorney-General may approve.

Examination annually of wards' books and Guardians' Fund investments. Duties of examiners.

111. The examiners shall ascertain

- (a) the total amount of principal and interest due on the thirty-first of December preceding, to all persons or estates in whose favour any account may be open in the said books ;
- (b) the amount invested upon mortgage or otherwise ;
- (c) the amount of interest earned on the Guardians' Fund during the previous year over and above the amounts due, as in the last preceding sub-section mentioned ; and
- (d) the balance of the profit and loss account of the previous year.

112. The examiners shall deliver to the Master a certificate of the balance on the profit and loss account so ascertained by them, and he shall forthwith forward a copy of the certificate to the Attorney-General. If it be a credit balance he shall thereupon pass a draft to the Colonial Treasury for the amount so certified.

Certificate of profit and loss to be granted to Master.

113. If the Master shall be of opinion that any portion of the Guardians' Fund invested in any manner has become irrecoverable, he shall submit the particulars thereof to the examiners, who, if they concur in that opinion, shall give a certificate of their concurrence to the Master. The Master shall thereupon report the fact to the Attorney-General, who may direct that the said amount be treated *mutatis mutandis* as irrecoverable revenue, and be charged to the profit and loss account of the Guardians' Fund.

Course of procedure in case of irrecoverable investments.

PART IV.

GENERAL.

114. If any person shall by will, or other deed, have appointed the Master in his official capacity to be the executor of his estate, or tutor testamentary of any minor, or curator nominate of any estate or property given or bequeathed by him to any minor or lunatic, such appointment shall be null and void ; and proceedings shall be taken for the appointment of an executor dative, tutor dative, or curator dative, as the case may be, just as if no such appointment of the Master had been made.

Invalidity of appointment of Master as executor, tutor, or curator.

115. The Master shall cause to be kept a register containing the names of every executor to whom letters of administration have been granted and of every surety for any executor dative, and also a register containing the names of every tutor and

Master to keep register of executors, tutors, curators, and sureties.

Proceedings
on insolvency
of such
person.

curator to whom any letters of confirmation have been granted, and of every surety for any such tutor or curator; and whenever any order for sequestration shall, under the provisions of Law No. 13 of 1895, be lodged with the Master he shall cause the said registers to be examined, and

(a) if the insolvent is the executor, or the surety of an executor of an estate not previously administered, distributed and finally settled, the Master shall notify the fact in the *Gazette* ;

(b) if the insolvent is either a tutor or curator of any minor lunatic or absent person, the Master may take steps for the appointment of a tutor or curator dative in the place of such insolvent ;

(c) if the insolvent is a surety for any tutor or curator the Master may require such tutor or curator to give additional security to his satisfaction, and if such additional security be not furnished within a reasonable time the Master, or any person interested, may move any competent court for the removal of such tutor or curator without in any way affecting the liability of such tutor or curator up to the time of his removal, or impairing the validity of any security, or releasing any surety or his estate.

Records of
Master's
office etc

116. The Master shall preserve of record in his office all original wills, codicils, testamentary instruments, death notices, inventories, and liquidation, administration and distribution accounts lodged with him under the provisions of this Proclamation, and any person may, at any time during office hours, inspect any such document and obtain a copy thereof, or an extract therefrom, on payment of the fees specified in the Schedule "E" to this Proclamation ; provided always that any person holding office under the Government of this Colony shall be, and is hereby authorized, without the payment of any fee, to inspect any such deed or document aforesaid, and to take a copy thereof or extract therefrom whenever it shall be necessary or expedient that the same should be done by any such person in the discharge of the duties of his office.

Master to
forward
duplicates to
magistrates.

117. The Master shall, as soon as may be after the expiration of each month, forward the duplicates or copies certified by him, of all accounts lodged with and accepted and filed by him, to the resident magistrates of the respective districts in which the persons to whose estates such accounts relate ordinarily resided at the time of their decease, or in any case in which any such person resided abroad to the resident magistrate of Pretoria ; and every such resident magistrate shall file such duplicates or copies in his office, and any person may at any time during office hours inspect or obtain a copy of or extract from any such duplicate or copy or any other document filed by the resident magistrate under the provision of this Proclamation on payment of the fee which would be payable to the Master for such inspection copy or extract.

Liability of
Master for
costs of
actions by or
against him.

118. When the Master shall be plaintiff or defendant in any action instituted by him or against him in his official capacity, and with reference to any matter or thing placed under

his guardianship, control or superintendence, or which he is required to do or cause to be done, under and by virtue of the provisions of this Proclamation, and the party against whom such action has been instituted by the Master, or by whom it has been instituted against him, shall have his costs in and with respect to such action adjudged to him by the court before which such action shall have depended, the Master may draw the amount of such costs from and pay the same out of the credit balance of the Guardians' Fund, unless the said court shall order that the said costs shall be paid by the Master out of his private funds; provided that nothing herein contained shall be deemed to limit the power of the Governor to specially authorize that any costs incurred or paid by the Master shall be defrayed out of the Guardians' Fund.

119. The provisions of this Proclamation shall not extend or apply to the estate or effects (except immovable property) of any person belonging to any regular regiment of His Majesty's army who shall die within this Colony, unless it shall be shown to the Supreme Court, or any judge thereof, or to the Master that for the preservation or due administration and distribution of such property it is necessary or expedient that the same should be dealt with under the provisions of this Proclamation.

120. Every person to whom letters of administration or letters of confirmation shall be granted after the date of the taking effect of this Proclamation for the administration of the estate of any person who shall have died prior to the said date, shall be subject to and conform with the provisions of this Proclamation, and shall administer the estate in accordance therewith.

121. The Master is hereby empowered to appoint such and so many persons as to him shall seem fit to act as appraisers for the valuation of all estates and property, the appraisement of which shall become necessary for the purposes of his department, and to revoke any appointment so made; and every such appraiser shall, in respect of every such appraisement by him, be entitled to demand and receive a reasonable compensation to be assessed and taxed by the Master; provided always that any person who shall act as such appraiser in any case in which he or any person whom he represented as agent, or any person to whom he is married or to whom he is related within the third degree of consanguinity or affinity has an interest in the estate to be appraised, shall be liable to forfeit the said compensation, and to pay a fine not exceeding one hundred pounds.

122. Every person who shall be appointed by the Master to act generally as an appraiser of such estates or properties as aforesaid, or to appraise any particular property or estate, shall take an oath before any judge of the Supreme Court, resident magistrate or justice of the peace, that he will appraise all such estates or properties as may be submitted to his valuation, according to the just, proper and true valuation thereof to the best of his skill and knowledge, and shall transmit the said oath so taken by him and certified by the judge, magistrate, or justice of the peace before whom the same shall have been taken, to the Master.

Property
exempt from
operation of
this
Proclamation.

This
Proclamation
applicable to
all executors,
etc.,
appointed
after the date
thereof.

Appointment
of appraisers
for the
valuation of
estates and
property.

Oath of
appraisers
before judge,
magistrate, or
justice of the
peace.

Master's fees.

123. The Master shall, and is hereby authorized and required to charge and to demand, receive, retain or recover in respect of the acts, matters and things done or caused to be done by him or in his office all such fees as are specified in the tariff contained in the Schedule hereunto annexed, marked "E", and shall collect these fees by means of revenue stamps to be affixed to the respective documents; provided that the fees for searches shall be affixed opposite to entries in a book kept for the purpose; and provided always that nothing herein contained shall repeal any law now in force requiring any stamp to be used for any purpose, or any stamp duty to be paid in respect of any proceeding, except in so far as any alteration shall be expressly made in the tariff of fees hereinbefore mentioned.

Meetings before magistrate or other authorized official.

124. Any meeting advertised to be held before any resident magistrate under the *twenty-seventh* and *seventy-eighth* sections hereof may, in the absence of such magistrate on leave or duty, or through indisposition, be held before an official to be authorized by the Master.

Governor may make regulations.

125. The Governor may, by proclamation, from time to time make and revoke rules and regulations for the better carrying into effect of the provisions of this Proclamation, the custody and preservation of the records, securities and valuable effects of the Master's office, the payment of money into and out of the Guardian's Fund, and generally for the management and good conduct of the business of the Master's office.

Repeal of Falcidian and Trebellianic laws.

126. In no case shall any heir of any one dying after the taking effect of this Proclamation be entitled to claim out of the estate of the person so dying, any portion under or by virtue of the laws known respectively as the Falcidian and the Trebellianic laws which, but for such laws respectively such heir would not be entitled to claim.

"Lex Hac Edictali" repealed.

127. From and after the taking effect of this Proclamation the law known as the law or "Lex Hac Edictali" shall be and the same is hereby repealed.

No legitimate portion can be claimed of right.

128. No legitimate portion shall be claimable of right by any one out of the estate of any person who shall die after the taking effect of this Proclamation.

Persons making will may disinherit any child, etc., without assigning reasons.

129. Every person competent to make a will who shall die after the taking effect of this Proclamation shall have full power to disinherit or omit to mention in his will any child, parent, relative or descendant without assigning any reason for such disinheritance or omission any law usage or custom now or heretofore in force in this Colony notwithstanding; and no such will as aforesaid shall be liable to be set aside as invalid, either wholly or in part, by reason of such disinheritance or omission as aforesaid.

Certain tacit hypothecations abolished.

130. All and singular the tacit hypothecations following, or such of them as now by law exist, are hereby abolished:

(1) The tacit hypothecations possessed by minors upon the estates of their pro-tutors or guardians, and upon the estates of agents or others intermeddling with the property or affairs of such minors, and by insane persons, adjudged

prodigals and interdicted persons upon the estates of their curators in security of the debts due and owing by such guardians, pro-tutors, agents or curators in their said capacity.

(2) The tacit hypothecation possessed by legatees in security of their legacies upon the estates of the testators by whom the legacies were bequeathed.

(3) The tacit hypothecation possessed by *fidei-commissary* heirs or legatees upon the estates of the fiduciary heirs or legatees having a limited interest in the inheritances or legacies in question.

(4) The tacit hypothecation possessed by women married out of community of property upon the estates of their husbands in respect of assets belonging to such women administered by their husbands.

(5) The tacit hypothecation possessed by children upon the estate of their surviving parent in respect of property coming from their deceased parent.

(6) The tacit hypothecation possessed by Government in respect of over-due taxes upon the estates of persons liable to pay the same or upon property affected by such taxes.

(7) The tacit hypothecation of the local Executive Government of this Colony upon the estates of auctioneers and deputy-postmasters, considered as collectors or receivers of the public revenue in security of any debts or demands due by them in their said capacities to the said Government.

(8) The tacit hypothecation of the said Government upon the estates of persons who shall have entered into contracts with the said Government in security for the performance of such contracts, or for any damages sustained by the non-performance thereof.

(9) The tacit hypothecation possessed by municipalities, churches and generally any public body or institution whatsoever upon the estates of persons entrusted with the collection, custody or administration of their revenues in security for the revenues not accounted for by such persons.

(10) The tacit hypothecation of persons by whom ships and houses have been built or repaired for the costs and charges thereby incurred; provided that nothing herein contained shall be construed so as to deprive any person of any right which he may now by law possess to retain any property whatsoever, which shall be in his actual possession until his costs and charges incurred thereon shall have been paid.

(11) The tacit hypothecation possessed by persons who have lent money for the purpose of being expended in the repair of houses and other property in security for the money so lent.

131. The provisions of the last preceding section shall not affect the estate of any person who died before the taking effect of this Proclamation or any right or tacit hypothecation acquired before that date.

Limitation of application of this Proclamation.

Limitation of application of this Proclamation with regard to certain rights of hypothecation already acquired.

132. With regard to all rights of tacit hypothecation which are of the classes described in sub-sections (3) and (5) of section *one hundred and thirty* of this Proclamation, and which have been acquired before the taking effect thereof, the following provisions shall apply :—

(a) If the persons entitled to such rights are majors at the date of the taking effect of this Proclamation, then such right shall not be operative upon any immovable property for a longer period than one year from the said date, unless the existence of the said rights be recorded in the Deeds Office against the title of such property according to law.

(b) If the persons entitled are minors at the date of the taking effect of this Proclamation, then such rights shall not operate in respect of any immovable property for a longer period than two years from the date of the majority of the said persons, unless the existence thereof is recorded as required by the last preceding sub-section.

Abolished
Powers of substitution and surrogation abolished.

133. From and after the taking effect of this Proclamation it shall not be competent for any person appointed executor in any estate, or tutor to any minor, to substitute or to surrogate any other person to act in his place.

Appointment of Acting Master.

134. It shall be lawful for the Governor to appoint an Acting Master of the Supreme Court, when and so often as occasion shall require, in case of the absence sickness or other disability of the Master; and such Acting Master shall have power and authority to do any act or thing which may lawfully be done by the Master.

Appointment of Assistant Master.

135. It shall be lawful for the Governor to appoint an officer to be styled the "Assistant Master", who shall, subject to such directions as the Attorney-General may from time to time issue, have power and authority to do any act or thing which may lawfully be done by the Master.

Repeal of repugnant laws.

136. The several laws mentioned in Schedule "F", and so much of any other law as may be repugnant to or inconsistent with the provisions of this Proclamation are hereby repealed.

Powers conferred on Supreme Court vested in High Court, etc.

137. Until the establishment of the Supreme Court mentioned in this Proclamation, the powers and jurisdiction conferred on that court or any judge thereof shall respectively be vested in and be exercised by the High Court of the Transvaal, or any member thereof; and the powers and jurisdiction conferred and the duties imposed on the Attorney-General and on the Master of the Supreme Court shall be conferred and imposed on the Legal Adviser to the Transvaal Administration, and on the Master of the High Court of the Transvaal respectively.

Short title.

138. This Proclamation may be cited for all purposes as the "Administration of Estates Proclamation, 1902", and shall take effect from and after the first day of June, 1902.

SCHEDULE "A".

DEATH NOTICE.

Pursuant to the provisions contained in "The Administration of Estates Proclamation, 1902".

1. Name of the deceased.....
2. Birthplace and nationality of the deceased.....
3. Names and addresses of the parents of the deceased :
 - Father.....
 - Mother.....
4. Age of the deceased..... years..... months.
5. Occupation in life of the deceased.....
6. Married or unmarried, widower or widow.....
 - (a) Name of surviving spouse (if any) and whether married in community of property or not.....
 - (b) Name or names and approximate date of death of predeceased spouse or spouses.....
 - (c) Place of last marriage.....
7. The day of the decease..... on....., 190.....
8. Where the person died :
 - House.....
 - Town or place.....
 - District.....
9. Names of children of deceased, and whether majors or minors :

(State separately the children born of different marriages, and give the date of birth of each minor. Names must be written out in full. If there are no children, and either or both parents be dead, then give the names and addresses of the brothers and sisters of deceased)

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10. Has the deceased left any movable property.....
11. Has the deceased left any immovable property.....
- *12. Is it estimated that the estate exceeds £100 in value.....
13. Has the deceased left a will.....

Dated at....., the..... day of....., 19..

(State in what capacity.)

This notice must be filled up and signed by the nearest relative or connection of the deceased, who shall at the time be at, or near, the place of death—or, in the absence of such near relative or connection, by the person who at, or immediately after, the death, shall have the chief charge of the house in, or the place on, which the death shall occur, and must be sent either to the Master of the Supreme Court in Pretoria, or, if the death occurred in the country districts, the resident magistrate of the district in duplicate within fourteen days of the death.

* See sec. 68 as amended by Ord. No. 15 of 1905, bringing the value of the estate to £200.

Form of letters of administration.

SCHEDULE "B".

These are to certify that A.B., of..... has been duly appointed the executor testamentary (or dative as the case may be), and is hereby authorized as such, to administer the estate of the late C.D., of.....

.....
Master of the Supreme Court.

Pretoria, this..... day of....., 19....

Letters of confirmation of tutors.

SCHEDULE "C".

These are to certify that A.B., of..... has been duly appointed, and is hereby authorized as such, to act as the tutor testamentary (or dative as the case may be) of C.D. minor, child of the late E.F., of.....

.....
Master of the Supreme Court.

Pretoria, this..... day of....., 19....

Letters of confirmation of curators.

SCHEDULE "D".

These are to certify that A.B., of..... has been duly appointed, and is hereby authorized, to act as the curator nominate of the estate given (or bequeathed as the case may be) to C.D. by G.H. (here describe the deed of gift or bequest by its date or otherwise) or, as the case may be, as the curator dative of the estate of C.D., of.....

.....
Master of the Supreme Court.

Pretoria, this..... day of....., 19....

* SCHEDULE "E".

TARIFF OF FEES.

	£	s.	d.
For registering any death notice	0	2	6
For registering any will, codicil, or testamentary writing	0	10	0
Inspection of any document, each estate	0	5	0
Copy of any document of one hundred words or less	0	5	0
For every additional one hundred words or portion thereof	0	2	6
For letters of administration as executor, testamentary, assumed, or dative, or certificates of appointment as curator bonis, each:			
Where the value of the estate does not exceed £100	0	10	0
Where the value of the estate exceeds £100	1	0	0
For letters of confirmation of the appointment of tutors, testamentary, assumed, or dative, or curators nominate, assumed, or dative, each	0	10	0
For every notice in the <i>Government Gazette</i> , including cost of publication	1	0	0
Attending meeting of next of kin, or creditors, before Master or resident magistrate	0	10	0
Approving of sureties given by executors, tutors, and curators	0	5	0
Registering accounts of executors, tutors, and curators, each	0	5	0
Registering any inventory act, repudiating an inheritance, deed of assumption, or any other deed, each	0	5	0
Registering an Order of Court	0	5	0
Registering any bond securing minors' portions	0	5	0
For every report at the discretion of the Master, subject to taxation, before the court or a judge thereof, not less than	0	10	0
For every certificate under the hand of the Master	0	5	0
For taking† the remuneration of executors, tutors, curators, or appraisers, on every pound or fraction of a pound of the taxed amount	0	1	0

° Sec, however, Act No. 15, of 1909, Fourth Schedule.
† As in *Gazette*; in Proc., 1900-1902, the word "taxing" is used.

SCHEDULE " F ".

Law Repealed.	Extent of Repeal.	Page in Statute Book.
Law No. 12 of 1870	The whole	395
Law No. 2 of 1871	Section 9	434
Volksraad Resolution of 2nd May, 1876	Article 6	641
Volksraad Resolution of 7th June, 1876	Article 113, so far as it affects the Master's office	660
Volksraad Resolution of 8th August, 1890	Article 1215	77
First Volksraad Resolution of 17th August, 1894	Article 1381	306
Law No. 5 of 1896	The whole	75
Law No. 3 of 1897	Sections 16 and 17 ..	15
Regulations framed under Section 16 of Law No. 3 of 1897, and promulgated under Government Notice No. 121, dated 10th March, 1898	The whole	339 & 340
Proclamation No. 12 of 1901 ..	Section 3	891
Transvaal Proclamation No. 1 of 1901	The whole	<i>Gazette</i> 965
Transvaal Proclamation No. 22 of 1901	Sections 1, 2, 3, and 4	<i>Gazette</i> 1264
Transvaal Proclamation No. 24 of 1901	The whole	<i>Gazette</i> 1368

Proclamation
(Trans.) No.
29 of 1902.

PROCLAMATION No. 29 OF 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 15th May, 1902.)

TO AMEND THE PATENTS PROCLAMATION, 1902.

Preamble.

WHEREAS it is desirable to amend the Patents Proclamation, 1902, and to give certain powers to the legal adviser to the Transvaal Administration in respect of the hearing of appeals from the Commissioner of Patents :

Now therefore, I do hereby proclaim, declare and make known, as follows :—

Insertion of
words in
sections of
original
Proclamation.

1. In section *five* of "The Patents Proclamation, 1902", the words "save as provided by sections *twenty-three* and *fifty-three* respectively of this Proclamation", shall be inserted immediately before the words "the expression invention" at the commencement of the paragraph in which those words appear.

2. In sub-section (2) of section *twenty-three* of the said Proclamation, the words "or any foreign country" shall be added after the words "in this Colony" in the first line of such sub-section.

3. In sub-section (4) of section *sixty* of the said Proclamation, the following words shall be added at the end of such sub-section, namely : "Provided always, that the term limited for the duration of every patent granted on any such application shall be fourteen years, together with such period as is equivalent to the period between the date when any such application was filed, and the commencement of this Proclamation".

4. At the end of section *sixty* of the said Proclamation, there shall be added the following sub-section, namely : "(7) The renewal fees payable in respect of any patents granted prior to the coming into operation of Law No. 10 of 1898, shall be the renewal fees prescribed by Law No. 6 of 1887".

Power to
Attorney-
General to
examine
witnesses
upon oath.

5. It shall be lawful for the legal adviser to the Transvaal Administration (hereinafter referred to as the legal adviser) on the hearing of an appeal to him from any decision of the Commissioner of Patents in any case in which any such appeal is given by "The Patents Proclamation, 1902", to examine witnesses on oath, and administer oaths for that purpose.

Power to
Attorney-
General to
make rules
regulating
appeals to
him.

*6. The legal adviser may from time to time make, alter and rescind rules regulating appeals to him and the practice and procedure before him under "The Patents Proclamation, 1902", and in any proceeding before the legal adviser under the said Proclamation, the legal adviser may order costs to be paid by either party and any such order *may be*† made a rule of the High Court of the Transvaal.

7. This Proclamation may be cited as "The Patents (Amendment) Proclamation, 1902".

* Such rules were made and published by Govt. Notice No. 191 of 1902 (*Gazette*, 17th May, 1902, p. 699).

† Words in italics appear in *Gazette*, but are omitted in Proc., 1900-1902.

† PROCLAMATION No. 31 OF 1902.

Proclamation
(Trans.) No.
31 of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 27th May, 1902.)

LEGALIZING CERTAIN MARRIAGES SOLEMNIZED IN THIS COLONY.

WHEREAS the Marriage Ordinance, Law No. 3 of 1871, requires a marriage to be solemnized either by a landdrost or by a minister of the gospel authorized by the Government to solemnize marriages on the production of a certificate from the landdrost that the provisions of the law have been complied with : Preamble.

And whereas Law No. 3 of 1897 requires a marriage between coloured persons to be solemnized by an officer appointed by the Governor for that purpose, or by the minister of a Christian or any other communion recognized by the State and duly authorized thereto by the Government, on the production of a certificate by such officer that the provisions of the law have been complied with :

And whereas after the occupation of the Transvaal by His Majesty's forces, persons were appointed as marriage officers by the military governors of Pretoria and Johannesburg to solemnize marriages under the aforesaid laws :

And whereas magistrates and district commissioners were appointed by the said military governors without being expressly vested with the powers and jurisdiction conferred on landdrosts by Law No. 3 of 1871, or with the powers and jurisdiction of the officers appointed to solemnize marriages between coloured persons under Law No. 3 of 1897 :

And whereas such magistrates, district commissioners and marriage officers appointed as aforesaid to solemnize marriages, did solemnize them under the aforesaid laws, and did grant certificates on which marriages were solemnized by ministers of religion duly authorized to solemnize marriages on the production of such certificates as aforesaid :

And whereas doubts have arisen whether the marriages solemnized by such magistrates, district commissioners and marriage officers appointed as aforesaid, or solemnized by ministers of religion on the certificates of such magistrates, district commissioners and marriage officers, are valid by reason of the fact that they were not legally vested with the powers and jurisdiction conferred on landdrosts by Law No. 3 of 1871, and on the officers appointed to solemnize marriages under Law No. 3 of 1897 :

And whereas such marriages as aforesaid were bona fide contracted by the said parties thereto, and were bona fide solemnized or certified to by the said magistrates, district commissioners and marriage officers appointed as aforesaid :

† See also Ord. No. 26 of 1902, legalizing marriages solemnized by certain landdrosts appointed by the late Government after 1st September, 1900, and by the Commandant-General and Assistant Commandants-General of the burgher forces; see also Ord. No. 33, 1905.

Now, therefore, by virtue of the authority in me vested, I do hereby declare, proclaim and make known as follows :—

Validation of marriages solemnized by officers appointed by military governor and by certain ministers of religion.

1. All marriages solemnized under Law No. 3 of 1871 by persons appointed by the military governors of Pretoria and Johannesburg as magistrates, district commissioners or marriage officers before or after such appointment, and all marriages solemnized by ministers of religion authorized to solemnize marriages either by the Government of the late South African Republic or by any Government Notice published in the *Gazette* since the 9th June, 1900, on the certificates of persons appointed as aforesaid, certifying that the provisions of the law have been complied with, shall be as valid to all intents and purposes as if such persons had been at the date of such marriages lawfully vested with all powers and jurisdiction conferred on landdrosts by Law No. 3 of 1871.

Ditto as to marriages of coloured persons.

2. All marriages solemnized under Law No. 3 of 1897 between coloured persons, by such magistrates or district commissioners appointed by the said military governors to solemnize marriages under the said law, and all marriages solemnized by ministers of religion duly authorized for that purpose either by the Government of the late South African Republic or under any Government Notice published in the *Gazette* since the 9th June, 1900, on the certificates of the persons appointed as aforesaid and given under the said law, shall be as valid to all intents and purposes as if the said persons so appointed were at the date of such marriages lawfully vested with the powers and jurisdiction conferred by Law No. 3 of 1897 on the person mentioned in the *second* section of the said law.

Validation of marriages solemnized by chaplains to H.M. Forces.

3. All marriages solemnized in this Colony under Law No. 3 of 1871 by any chaplain to His Majesty's forces between the date of the annexation of the Transvaal to His Majesty's Dominions, to wit, the first day of September, 1900, and the thirty-first day of March, 1901, shall be as valid, to all intents and purposes, as if such chaplain had been at the several dates of such marriages a lawfully appointed marriage officer authorized to solemnize marriages under the said law, without the production of the certificate required thereby.

Title.

4. This Proclamation shall be cited for all purposes as the "Legalization of Marriages Proclamation, 1902".

PROCLAMATION No. 32 OF 1902.

Proclamation
(Trans.) No.
32 of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 28th May, 1902.)

INTEREST ON MORTGAGE BONDS.

By virtue of the authority in me vested, I do hereby declare, proclaim and make known as follows :—

1. Notwithstanding anything to the contrary contained in the Proclamation dated October 25th, 1899, signed by the President of the late South African Republic, and published in the *Staatscourant* at page 1685 ;

No person who has passed a mortgage bond on land or other fixed property shall be entitled under and by virtue of the aforesaid Proclamation to claim exemption from the payment of any interest which shall accrue in respect of such bond from the first day of June next.

Exemption
from interest
on mortgage
bonds due
after 1st
June, 1902,
not to be
claimed.

Nothing contained in this section shall affect the provisions of section *two* of Proclamation, Transvaal, No. 27 of 1901.

2. Notwithstanding anything contained in the proviso to section *two* of Proclamation, Transvaal, No. 27 of 1901, actions at law may be brought and maintained in any competent Court in this Colony for the capital sum of any mortgage bond included in the aforesaid Proclamation of the 25th October, 1899, after the expiration of six months, reckoned from the first day of June next, but not before.

Power to
bring actions
for capital
sum of
mortgage
bond after six
months from
1st June,
1902.

3. Nothing contained in this Proclamation or in Proclamation Transvaal No. 27 of 1901 shall be taken in any way to validate the aforesaid Proclamation of the 25th October, 1899.*

Proclamation
of 25th Octo-
ber, 1899, not
hereby
validated.

* Proclamation of 25th October, 1899, has now been declared by the Supreme Court to have been invalid *ab initio*, but by Ord. No. 42 of 1902 actions on bonds passed before 25th October, 1899, upon which interest during the war period is still due, are not to be brought before 1st January, 1904. Interest is to be payable on the deferred interest. But see Ord. No. 42 of 1902.

Proclamation
(Trans.) No.
33 of 1902.

PROCLAMATION No. 33 OF 1902.

By His Excellency THE ADMINISTRATOR.

(Dated 5th June, 1902.)

TO AMEND THE LAW RELATING TO POST-OFFICE SAVINGS BANKS.

Preamble.

WHEREAS it is expedient to afford facilities for the deposit of small savings at interest upon the security of the public revenue, and to make the General Post-Office of the Colony available for that purpose;

Now therefore by virtue of the authority in me vested, I do hereby proclaim and make known as follows:—

Repeal of laws.

1. Law No. 9, 1892, Law No. 6, 1893, and First Volksraad Resolution dated 12th July, 1894, Art. 817, are hereby repealed, and any other law repugnant to, or inconsistent with, this Proclamation.

Power of Postmaster-General to establish savings banks.

2. The Postmaster-General may, with the consent of the Controller of the Treasury, establish post-office savings banks, and authorise and direct such of his officers as he shall think fit, to receive deposits for remittance to the principal office, and to repay the same under such regulations as the Governor may, from time to time prescribe in that respect by notice published in the *Gazette*.

How deposits to be made, entered, reported, and proved.

3. Every deposit received by any officer of the Postmaster-General appointed for that purpose, shall be entered by him at the time in the depositor's book, and the entry shall be attested by him and by the dated stamp of his office, and the amount of such deposit shall upon the day of such receipt, if there be a daily post, or by the next post if the mail be despatched less frequently, be reported by such officer to the Postmaster-General, and the acknowledgment of the Postmaster-General signified by the officer whom he shall appoint for the purpose, shall be forthwith transmitted to the depositor, and the said acknowledgment supported by the duly attested entry in the depositor's book shall be conclusive evidence of his claim to the repayment thereof, with the interest thereon, upon demand made by him on the Postmaster-General; and in order to allow a reasonable time for the receipt of the said acknowledgment, the entry by the proper officer in the depositor's book shall also be conclusive evidence of such claim to repayment for twenty days from the lodgment of the deposit; and if the said acknowledgment shall not have been received by the depositor through the post within twenty days, and he shall before or upon expiry thereof demand the said acknowledgment from the Postmaster-General, then the entry in his book shall be conclusive evidence of such claim during another term of thirty days.

4. Deposits of one shilling, or any number of shillings, or of pounds and shillings, will be received from any depositor at any post-office savings bank, provided the deposits made by such depositor in any year ending on the thirtieth day of June do not exceed one hundred pounds, and provided the total amount standing in such depositor's name in the books of the Postmaster-General do not exceed five hundred pounds, exclusive of interest. When the principal and interest together standing to the credit of any one depositor amount to the sum of six hundred pounds, all interest shall cease so long as the same funds amount to the said sum of six hundred pounds.

Limits of deposits.

5. On demand of a depositor or person legally authorised to claim on account of a depositor, made in such form as shall be prescribed in that behalf for repayment of any deposit or any part thereof, the authority of the Postmaster-General for such repayment shall be transmitted to the depositor forthwith, and the depositor shall be absolutely entitled to the repayment of any sum that may be due to him within thirty days after his demand shall have been made at any post-office where deposits are received or paid.

How repayments to be obtained.

6. The officers of the Postmaster-General engaged in the receipt or payment of deposits shall not disclose the name of any depositor, nor the amount deposited or withdrawn, except to the Postmaster-General or to such of his officers as may be appointed to assist in carrying this Proclamation into operation; provided that nothing herein contained shall be deemed to limit the authority of the Auditor-General.

Secrecy to be observed.

†7. The Postmaster-General shall keep separate accounts of all moneys deposited and paid under this Proclamation, and the Controller of the Treasury shall from time to time, and as often as the account will permit, invest any moneys to the credit of such account in such manner as the Governor may require or approve of, and may, as often as *the case*† may require, or as the Governor may deem expedient, realise or vary any such investments.

Accounts to be kept and investments made.

§8. The interest payable to depositors shall be at such rate as may, from time to time, be fixed by the Governor not exceeding the rate of five pounds per centum per annum; but such interest shall not be calculated on any amount less than one pound or some multiple thereof, and shall not commence until the first day of the month next following the day of deposit, and shall cease on the first day of the month in which such deposit is withdrawn.

Interest.

9. Interest on deposits shall be calculated to the thirtieth day of June in every year, and shall then be added to and become part of the principal money.

How calculated.

† See, however, Act No. 14, 1907, sec. 17. The P. O. S. B. Investment Board was dissolved by Govt. Notice No. 1225 of 1906 (*Gazette*, 23rd November, 1906), and a General Investment Board substituted; for regulations of latter see Govt. Notices Nos. 539 of 1909 (*Gazette*, 14th May, 1909) and 1032 of 1909 (*Gazette*, 3rd September, 1909).

‡ As in *Gazette*; in Pr. 1900-1902 the word "occasion" is here given.

§ As to reduction of interest on deposits see Govt. Notice No. 540 of 1909 (*Gazette*, 14th May, 1909).

Names and addresses of depositors to be furnished and declaration to be made.

10. Every depositor on making a first deposit shall be required to specify his name in full, his occupation and residence, to the officer of the Postmaster-General appointed to receive the deposit, and make, and subscribe with his name or mark, if unable to write, the declaration set forth in the schedule hereto annexed, marked "A", to be witnessed by the officer of the Postmaster-General appointed to receive deposits, or by some person known to him, or by some minister of religion in the district in which the depositor resides, or by a justice of the peace. If the depositor cannot write, the certificate at the back of the declaration form shall be filled up and witnessed by two persons, both over the age of sixteen years.

Trust deposits.

11. Deposits may be made by a trustee on behalf of another person in the joint names of such trustee and the person on whose account such money shall be so deposited; but repayment of the same, or any part thereof, shall not be made without the receipt of both the parties, or the executors or administrators, and the survivor in the case of the decease of one of them whose receipt, either personally, or by agent appointed by power of attorney, which power of attorney may be executed by an infant of, or exceeding the age of fourteen years, shall alone be a valid discharge except in case of insanity or imbecility of the person on whose behalf the deposits were made, when the Postmaster-General may, on proof of such incapacity to his satisfaction, allow repayment to be made to the trustee alone. And in such cases the declaration set forth in Schedule "B" shall be signed by the said trustee.

Deposits for minors.

12. Deposits may be made by, or for the benefit of, any person under twenty-one years of age, and repayment may be made to such minor after the age of seven years in the same manner as if he were of full age. In cases of minors under the age of seven years the declaration set forth in the Schedule annexed, marked "A", shall be signed for, and on his behalf, by one of the parents or a friend of such depositor.

Married women.

13. Any postmaster or other officer as aforesaid may pay under the authority of the Postmaster-General any sum of money in respect of any deposit made by a married woman, or by a woman who may marry after such deposit, to such woman.

Deposits by societies.

14. The trustees of any friendly society, or of any charitable, provident, or other society approved by the Controller of the Treasury, may deposit the funds without restriction as to the maximum amount in the post-office savings bank; provided, that a copy of the rules be forwarded to the Postmaster-General, with the names and addresses of* trustees. And, in the case of such societies, the declaration set forth in the Schedule annexed, marked "C", shall be signed by one or more of the trustees, the treasurer, steward, clerk, or other responsible officer or officers, for, and on behalf of such society.

How deposits of intestates and others to be dealt with.

15. In case any depositor in the said post-office savings bank shall die, leaving a sum of money in the post-office savings bank, which, with the interest due thereon, shall not exceed in the whole the sum of fifty pounds, and letters of

* In Proc. 1900-1902 the word "such" appears here; that word does not appear in *Gazette*.

administration be not produced to the Postmaster-General, or if notice in writing of the existence of a will, and intention to take out letters of administration be not given to the Postmaster-General at his principal office within the period of two months from the death of the depositor, or if such notice be given, but such letters of administration be not taken out, and produced to the Postmaster-General within the period of three months from the death of the depositor, it shall be lawful for the Postmaster-General after the expiration of the two or three months, as the case may be, with the consent of the Legal Adviser to the Transvaal Administration, to pay and divide such money to and among such persons as shall appear to be entitled thereto; and every such payment shall be a valid and effectual discharge against any demand or claim,† made upon the funds of the said post-office savings bank by any other person as being the lawful representative of such depositor; and any such person so claiming as aforesaid, shall have his remedy by recourse against the person who shall have received such payments, and not otherwise; and such administration or distribution by the said Postmaster-General, shall be entirely free, and discharged from all stamps‡ fees and duties whatsoever; provided, that in case no claims be made on any such money as aforesaid, or if made, shall not be admitted by the said Postmaster-General, or by the determination and adjudication of one of the members of the High Court of the Transvaal as hereinafter mentioned, then, and in every such case, such money shall, subject to any order made by any such judge, be paid by the Postmaster-General into the Guardians' Fund, to be dealt with by the Master of the said High Court as if such money had been paid in by an executor or tutor.

16. If any depositor of a sum not exceeding fifty pounds being illegitimate shall die intestate, leaving any person who but for the illegitimacy of such depositor would be entitled to the money due to such deceased depositor, it shall be lawful for the Postmaster-General with the authority in writing of the Legal Adviser to the Transvaal Administration to pay the money of such deceased depositor to any one or more of the persons who, in his opinion, would have been entitled to the same according to the law of succession *ab intestato* if the said depositor had been legitimate.

Deposits of illegitimate persons deceased.

17. As often as the Postmaster-General shall, under the provisions of sections *fifteen* or *sixteen* of this Proclamation, distribute any sum of money deposited in the post-office savings bank, he shall forward to the Master of the High Court an account showing the sum deposited and the distribution thereof, and such account shall be filed and registered in the same manner as an account rendered by an executor but free from any fee or duty.

Account of deposits distributed under sections *fifteen* or *sixteen* to be forwarded to the Master.

† In *Gazette* the words are "and demand of claim", which is clearly an error.

‡ As in *Gazette*: in Proc. 1900-1902 the word "stamp" is given.

Certificate of amounts deposited.

18. In all cases wherein a certificate shall be required of the amount of the balance standing in the books of the post-office savings bank, for the purpose of obtaining letters of administration such certificate shall be prepared in the manner set forth in the Schedule annexed, marked "D".

How disputes between depositor and Postmaster-General to be settled.

19. In case any difference shall arise between the Postmaster-General and any depositor in the said post-office savings bank, or any executor, administrator, next of kin, or creditor or trustee of a depositor who may become insolvent or any person claiming to be such executor, administrator, next of kin, creditor or trustee or to be entitled to any money deposited in the post-office savings bank, then and in every such case the matter so in dispute may be referred in writing to the summary decision of one of the members of the High Court of the Transvaal; and such member may inquire into and determine the matter in dispute and his determination and adjudication on the premises shall be final and conclusive and binding on the parties; provided that such member may if he see fit make such order for further enquiry and determination of the matter in dispute as he may deem necessary.

Governor may make regulations.

*20. The Governor may make by notice published in the *Gazette* regulations for superintending, inspecting and regulating the mode of keeping and examining the accounts of depositors and with respect to the making of deposits and to the withdrawal of deposits and interest and all other matters incidental to the operation of this Proclamation and all regulations so made shall be binding on the parties interested to the same extent as if such regulations formed part of this Proclamation.

Accounts to be laid before the Governor.

21. An account of all deposits received and paid under the authority of this Proclamation and of the expenses incurred during the year ending the thirtieth day of June, together with a statement of the total amount due at the close of such year to all depositors, shall be laid before the Governor before the thirtieth day of September next ensuing.

Expenses.

Short title.

22. This Proclamation may be cited as "The Post-Office Savings Bank Proclamation, 1902".

SCHEDULE "A".

S. B. I.

DEPOSITOR'S BOOK.
Office.....
No.....

DECLARATION BY DEPOSITOR ON MAKING FIRST DEPOSIT.

(Name in full) I,.....
 (Residence) of.....
 (Occupation).....
 (If a female, state whether married, widow, or spinster.)

* Regulations under this section were promulgated by Govt. Notice No. 224 of 1902, published in *Govt. Gazette* of 6th June, 1902; see further *Govt. Notices* No. 1101 of 1905 (*Gazette*, 22nd Dec., 1905); No. 1017 of 1906 (*Gazette*, 12th Oct., 1906); as to transfer of deposits to United Kingdom, see *Govt. Notice* No. 1102 of 1905 (*Gazette*, 22nd Dec., 1905); to O.R.C. and Natal, see *Govt. Notice* No. 967 of 1906 (*Gazette*, 28th Sept., 1906); to Southern Rhodesia, *Govt. Notice* No. 1042 of 1907 (*Gazette*, 20th Sept., 1907).

do hereby declare to the Postmaster-General that I desire, on my own behalf, to make deposits in the Post-Office Savings Bank, and that I am not directly or indirectly entitled to any sum or sums standing in my own name, or in the name or names of any other person or persons in the said Post-Office Savings Bank, save and except deposits which may have been made by the officers of any Society of which I am a member, and which may have been authorized to make deposits in the Savings Bank, or deposits to which I am entitled solely as executor, administrator, or other personal representative of a deceased depositor. I also signify my consent that my deposits in the said Post-Office Savings Bank shall be managed according to the Regulations thereof.

Witness my hand this.....day of....., 19....

Signature of depositor.....

Signed by the said depositor {
in presence of me {

If the depositor cannot write, the certificate printed on the back of this form must be filled up and signed by two persons, both above sixteen years of age.

In case the money is deposited on behalf of a minor under the age of seven years the declaration must be made by one of the parents or guardians. The date on which the minor will attain the age of seven years must be stated here.

Seven years of age on the.....day of....., 19....
before which date the deposits cannot be withdrawn.

CERTIFICATE.

We, the undersigned, certify that the declaration printed on the other side was read to the depositor in our presence and hearing, that the depositor declared that he understood the same, and that he made his mark thereto in our presence.

Signature.....

and

Address.....

Signature.....

and

Address.....

SCHEDULE " B "

S.B. 2.

DEPOSITOR'S BOOK.
Office.....
No.....

DECLARATION BY PERSON MAKING FIRST DEPOSIT AS TRUSTEE FOR ANOTHER

(Name in full) I.....
(Residence) of.....
(Occupation).....

(If a female, state whether married, widow, or spinster.)

hereby declare to the Postmaster-General that I desire to make deposits in the Post-Office Savings Bank as Trustee of ,

(Name in full).....*
(Residence) of.....
(Occupation).....

(If a female, state whether married, widow, or spinster.)

* If the person in trust for whom the account is opened be under seven years of age, the date on which he will attain that age is to be stated here :

Seven years of age on the.....day of.....19.....
before which date the deposits cannot be withdrawn.

hereinafter called the depositor, and, further, that I am not entitled to any benefit from the deposits which I desire to make as such trustee, and that the depositor is not directly or indirectly entitled to any benefit from any deposits in the Post-Office Savings Bank, save and except deposits made by the officers of any society of which he is a member, and which may have been authorized by the Postmaster-General to make deposits in the Savings Bank, and save and except deposits to which the depositor is entitled as executor, administrator, or other personal representative of a deceased depositor. I also signify my consent that the deposits made by me in the Post-Office Savings Bank, on behalf of the depositor, shall be managed according to the Regulations thereof.

Witness my hand this..... day of....., 19....
..... Signature.

Signed by the said Trustee {
in the presence of me {

If the trustee cannot write, the certificate printed on the back of this form must be filled up and signed by two persons of at least sixteen years of age.

CERTIFICATE.

We, the undersigned, certify that the declaration printed on the other side was read over to the person making the same in our presence and hearing, that he declared that he understood it, and that he made his mark thereto in our presence.

Signature.....
and
Address.....
Signature.....
and
Address.....

SCHEDULE "C".

S.B. 3.

DEPOSITOR'S BOOK.
Office.....
No.....

DECLARATION TO BE MADE BY OFFICERS OF A SOCIETY WHEN DEPOSITING MONEY ON BEHALF OF SUCH SOCIETY.

I, being
..... and I, being
..... of the Society called.....
established at..... in the District of
..... do hereby declare to the Post-
master-General that ^Iwe on behalf of the said Society ^{am}are desirous of making
deposits in the Post-Office Savings Bank of the Transvaal.

^I We ^{am} further declare that the moneys now being deposited, and hereafter to be deposited, are the property of the said Society, consisting of contributions of the members thereof.

Given under ^{my}our hand this.....
day of , 19....

Signed in my presence.....

SCHEDULE "D".

DEPOSITOR'S BOOK.
Office.....
No.....

POST-OFFICE SAVINGS BANK.

It is hereby certified that the balance standing in the books of the Post-Office Savings Bank to the credit of the depositor..... numbered as above, on the.....day of..... in the year 19.. amounts in the whole to the sum of.....

*Controller,
Savings Bank Department,
General Post-Office,
Johannesburg.*

*Entered.....
Examined.....*

PROCLAMATION No. 34 OF 1902.

Proclamation
(Trans.) No.
34 of 1902.

By His Excellency THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 5th June, 1902.)

Preamble.

WHEREAS it is desirable to repeal the "Regulations regarding the payment of a five per cent. tax on the net profits of Gold Mines", published in the *Staatskoerant* of the 15th February, 1899, and make other provisions in lieu thereof:—

Now, therefore, by virtue of the authority in me vested I do hereby, declare, proclaim, and make known as follows:—

Repeal of
regulations of
15th Feb.,
1899.

1. The regulations published in the *Staatskoerant* of the 15th February, 1899, regarding the "payment of the five per cent. tax on the net profits of Gold Mines", and so much of any other law or regulations inconsistent with the provisions of this Proclamation, shall be, and are hereby repealed.

Tax of 10 per
cent. on
annual net
produce of
gold-bearing
properties.

2. There shall be levied a tax of ten per cent. on the annual net produce obtained from the working of claims mynpachts and other gold-bearing properties situated in this Colony; such net produce shall be taken to be the value of the gold produced after deduction therefrom of the cost of production, and of such sums as may be allowed in respect of the exhaustion of capital as hereinafter defined.

Definition of
"cost of
production."

†3. For the purposes of this Proclamation cost of production shall mean

(1) all amounts not being capital outlay actually expended during the year on winning and treating the ore under the heads specified in Account No. I, contained in the Schedule annexed *hereto;

(2) all amounts actually expended on general charges as specified in the aforesaid Schedule.

Definition of
capital.

†4. Capital shall mean for the purposes of this Proclamation

(1) all amounts actually expended in mine equipment, shaft sinking, and development, whether incurred before or after the commencement of production not being of a recurrent character, or such as are ordinarily defrayed out of revenue;

(2) all amounts expended for ordinary purposes of administration prior to the commencement of production.

Amount to be
deducted
under section
two hereof.

5. (1) The amount to be deducted under section two by way of allowance for exhaustion of capital shall be such sum as, if paid by way of annuity from the date of the commencement of production (or from the date of the expenditure of the capital if such expenditure took place subsequent to such commencement) for the whole period during which the property is estimated to continue to be workable, would at 3 per cent. compound interest produce an amount equal to the amount of such capital.

* As in *Gazette*.

† See Ord. No. 28 of 1906, sec. 3, as to meaning of words "amounts actually expended".

(2) The period referred to in the last preceding sub-section shall, subject to the provisions of section *nine* of this Proclamation, be determined by the Commissioner of Mines on the estimate contained in Account No. II of the statement to be furnished in accordance with the provisions of section *six* hereof.

(3) For the purpose of determining this period it shall be open to the Commissioner of Mines, or any person authorised by him thereto to call for such further particulars as he shall think fit, and to make, or cause to be made, any examination of the property, and any plans or documents which may appear to him to be necessary for the purpose.

Determination of period mentioned in section *five* (1).

(4) Such period having been determined as herein provided, shall, for the purpose of calculating the deduction to be allowed in respect of exhaustion of working capital, be subject to revision in every fifth year after the year in which it was first determined. If on such revision it shall appear according to a just estimate then to be made that the period determined originally, or, by any subsequent revision, was greater or less than the true period according to such estimate, such adjustment shall be made in the deduction to be allowed as shall be necessary, due regard being had to the time which shall have elapsed since such original or subsequent determination, and to the total amount of the deductions already allowed.

Revision of period for purpose of calculation of deduction.

(5) In any such revision the same provisions shall apply as in the original determination of the period.

6. (1) A statement shall be rendered by every company or partnership owning claims, mynpachts or other gold-bearing properties to the Receiver of Revenue at Johannesburg, in the form prescribed in the Schedule annexed hereto, or in any similar form which may be accepted by the Controller of the Treasury, within one month after the date of the making up of the first accounts rendered to the shareholders or partners of such company or partnership after the taking effect of this Proclamation; and if no accounts are made up by such company or partnership prior to the 30th June, 1903, then such statement as aforesaid shall be rendered on such last-mentioned date. In the case of properties not owned by any company or partnership the statement shall be rendered on the 30th June, 1903, or on such other date as shall be allowed by the Controller of the Treasury. The said statement shall be in respect of the twelve months immediately preceding the date up to which such accounts are rendered as aforesaid, or the 30th of June, as the case may be.

Statement rendered by owners of gold-bearing properties to the Receiver of Revenue, according to form in Schedule.

(2) The statement in the case of a company shall be made and signed by the managing director or secretary thereof, and in any other case by the principal partner or other person having the control or management of the property within this Colony.

By whom signed.

(3) At the same time as such statement is rendered the duty appearing to be due thereon in accordance with the provisions of this Proclamation shall be paid to the said Receiver, who shall grant a receipt therefor.

Duty to be paid.

(4) A similar statement shall be rendered annually not later than twelve months after the date of the one previously rendered, and the duty paid as aforesaid.

Annual statement.

Transmission of statement to Colonial Treasurer.

(5) On any such statement being rendered, and the duty paid as herein provided, the Receiver shall forthwith transmit the statement and any documents connected therewith to the Controller of the Treasury.

(6) In the case of a property which shall cease to be worked within a year from the taking effect of this Proclamation, or from the date of the last statement rendered under this Proclamation a statement shall be rendered for the period up to the date of ceasing, and the duty chargeable thereon shall be a first charge on such property or any assets existing in connection therewith.

Colonial Treasurer may call for evidence to satisfy himself of correctness of statement.

7. The Controller of the Treasury may call for such evidence as he thinks fit with a view to satisfying himself as to the correctness of the statement referred to in the last preceding section, and for this purpose shall have the right at all reasonable times of inspecting the books of the company, partnership, or person rendering such statement, or of causing the same to be inspected by any person authorized thereto in writing.

If not satisfied may call for amended statement.

8. (1) If the Controller of the Treasury is not satisfied that the net produce as disclosed by any such statement as aforesaid, is the full and true amount on which the tax imposed by this Proclamation is payable, he shall cause the company, partnership, or person rendering such statement to be notified in writing of the particulars in which it shall appear to him that such statement should be amended* in accordance with such notification.

Assessment on amended statement.

(2) On such amended statement being rendered to the satisfaction of the Controller of the Treasury, he shall cause an assessment to be made in accordance therewith of the amount on which the tax shall be paid.

Assessment in case amended statement not rendered.

(3) If the company, partnership, or person in question shall not render such amended statement to the satisfaction of the Controller of the Treasury within fourteen days or such further period, as may be allowed, the Controller of the Treasury shall cause an assessment to be made of the amount on which in his opinion the tax should be paid according to this Proclamation and shall notify the company, partnership, or person of such assessment, showing in detail how such assessment is made.

Copy of assessment to be transmitted to Receiver of Revenue.

(4) A copy of any assessment made under this section shall be forwarded to the Receiver of Revenue at Johannesburg, and the duty due thereon according to this Proclamation shall on demand be payable to the said Receiver.

Arbitration of amount of assessment.

9. It shall be lawful for the company, partnership, or person aforesaid at any time within one month from the date of receiving notification of assessment, as provided in the last preceding section, on payment of the amount demanded as aforesaid to call on the Controller of the Treasury, to have the amount on which the said tax shall be paid determined by arbitration, and if such amount be less than that assessed, the said Receiver of Revenue shall refund to the said company, partnership, or person the difference between the amount of the tax paid by the said company,

* In Proc. 1900-1902 the words "and shall call for a statement amended" are given after the word "amended"; these words do, however, not appear in the *Gazette*.

and the amount payable on the sum determined by arbitration as aforesaid. If the amount determined by such arbitration shall be greater than that assessed as aforesaid, the tax due in accordance with the provisions of this Proclamation or the difference between such amounts shall on demand be payable to the said Receiver.

10. The provisions of the "Expropriation of Lands and Arbitration Clauses Proclamation, 1902" relating to arbitration, shall *mutatis mutandis* apply to any arbitration under this Proclamation. Pr. Tr. 5 of 1902 to apply to arbitration.

11. The demand by the Receiver of Revenue mentioned in the preceding sections, shall be delivered at the office of the party liable for the tax, or posted thereto by registered letter properly stamped, and thereupon the amount demanded shall be a debt due to His Majesty, recoverable after four weeks from the date of the said demand, with interest at the rate of ten per cent. per month from the date of such demand. How demand to be made.

12. Any company, partnership, or person failing to render the statement mentioned in section *six* of this Proclamation, shall be liable to a penalty of ten pounds for every day such company, partnership, or person is in default, after the expiration of one month from the date prescribed in the said section for rendering such statement. Penalty for failing to render statement.

13. Any person wilfully framing any false statement or account for the purposes of this Proclamation, shall be deemed to be guilty of perjury, and shall be liable to the penalties provided for the commission of that crime; and any company, partnership, or person employing such person to frame such account shall be liable to a penalty not exceeding £500, in addition to making good any unpaid duty which was properly payable under this Proclamation. Penalty for framing false statement.

14. Any person who refuses to allow the Controller of the Treasury, or any person duly authorized by him in writing thereto, to inspect such books as he is entitled under this Proclamation to inspect, or who wilfully obstructs him in such inspection, or refuses to allow the Commissioner of Mines or any person deputed by him to make such inspection of the property as he is by this Proclamation authorized to make, or wilfully obstructs him therein, shall be liable to a fine of £50 for every such refusal or obstruction, and in default of payment to imprisonment with or without hard labour for a period not exceeding six months. Penalty for refusal to allow inspection of books.

15. Any statement or account rendered by any company or partnership under this Proclamation shall not be divulged by any person into whose hands it may come, except for purposes connected with the proper carrying out of the provisions of this Proclamation, and to some person duly authorised to deal with such statements and accounts. Any person wilfully contravening the provisions of this section shall be liable on conviction to a penalty not exceeding fifty pounds, or to imprisonment with or without hard labour for a period not exceeding six months. Penalty for divulging information contained in statement.

16. Any penalty imposed by this Proclamation shall be recoverable by action in any competent court. Recovery of penalty.

Forms to be used.

17. For the purpose of the due carrying out of the provisions of this Proclamation, it shall be lawful for the Controller of the Treasury to use such forms, in addition to and in substitution for the forms herein prescribed as he shall think fit.

Title.

18. This Proclamation may be cited for all purposes as the "Profits Tax (Gold Mines) Proclamation 1902".

SCHEDULE.

ACCOUNT NO. I.

Account of Produce Working Expenses and Profit and Loss for the year ended....

MINE EXPLOITATION :		£	s.	d.
Mining .. .. .	.. .. .	..	..	..
Development .. .. .	.. .. .	..	..	..
Shaft sinking .. .. .	.. .. .	..	..	..
Mechanical treatment .. .. .	.. .. .	..	..	..
Chemical treatment .. .. .	.. .. .	..	..	..
Charges including—				
Secretary's salary .. .. .	.. .. .	..	..	..
Directors' fees .. .. .	.. .. .	..	..	..
Claim licences .. .. .	.. .. .	..	..	..
Insurance .. .. .	.. .. .	..	..	..
Printing, stationery, and advertising .. .. .	.. .. .	..	..	..
Salaries, wages, and native labour .. .. .	.. .. .	..	..	..
Maintenance, buildings, and surface .. .. .	.. .. .	..	..	..
London and Paris agencies .. .. .	.. .. .	..	..	..
Legal expenses .. .. .	.. .. .	..	..	..
Sundry expenses .. .. .	.. .. .	..	..	..
Balance .. .. .	.. .. .	..	..	..
GOLD ACCOUNT :		£	s.	d.
.....ozs. fine gold from mechanical treatment	.....ozs. fine gold from chemical treatment	..	..	..
Products not expressed in fine gold .. .. .	.. .. .	..	..	..

ACCOUNT NO. II. £ s. d.

- (a) Estimated life of the mine or gold-bearing property
- (b) Working capital expended prior to commencement of production (specify different heads)
- (c) Working capital expended since commencement of production (specify dates and heads of expenditure)

ACCOUNT NO. III. £ s. d.

1. Balance from Account No. I	£	s.	d.
Allowance in respect of capital included in Account No. II (b) .. .. .	..	..	..
Ditto, ditto, in Account No. II (c) .. .. .	..	..	..
Total allowance in respect of capital .. .. .	..	..	..

Net produce £

CERTIFICATE.

On behalf of..... (here insert the name of the company or firm, if any), I certify that the statements contained in the foregoing accounts, No. I and No. II, are to the best of my knowledge and belief true and correct.

Dated the..... day of....., 19....

Received from..... the sum of..... being duty at the rate of ten per centum on the amount above stated. Receipt issued No.....

Receiver of Revenue.

....., 19....

*PROCLAMATION No. 36 OF 1902.

Proclamation
(Trans.) No.
36 of 1902.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 6th June, 1902.)

TO AMEND AND ADD TO THE LAW RELATING TO LUNATICS.

WHEREAS it is desirable to amend the present law relating to Lunatics ; Preamble.

Now, therefore, by virtue of the authority in me vested, I do hereby declare, proclaim and make known as follows :—

1. Law No. 9 of 1894, and so much of any other law as may be repugnant to or inconsistent with the provisions of this Proclamation are hereby repealed ; but such repeal shall not affect any warrant issued or thing done in pursuance of any such repealed law. Repeal of laws.

2. In the construction of this Proclamation, the following terms shall have the meanings herein assigned to them unless there is something in the context repugnant to such construction : Interpretation of terms.

“Asylum”† means an asylum for lunatics now existing, or which may hereafter be declared by the Governor as an asylum or place for the reception or detention of lunatics.

“Court” means the High Court of the Transvaal.

“Criminal Lunatic” means any person convicted of any crime and certified to be insane under the provisions of this Proclamation.

“Governor’s Pleasure Lunatic” means any person for whose detention during his pleasure, the Governor is authorised to grant an order.

“Judge” means any member of the High Court of the Transvaal.

“Constable” includes members of the police force.

“Attorney-General” includes the Legal Adviser to the Transvaal Administration.

“Colonial Secretary” includes the Secretary to the Transvaal Administration.

“Lunatic” includes any idiot or person of unsound mind incapable of managing himself or his affairs.

“Magistrate” means a Resident Magistrate and includes an Acting Resident Magistrate and an Assistant Resident Magistrate.

“Medical Practitioner” means a legally qualified medical practitioner within the meaning of any law now or hereafter in force.

* See Act No. 16, 1907 (Functions exercisable by Governor under this Proclamation vested in Colonial Secretary or other Minister); Act No. 3, 1908; Act No. 4, 1908 (Asylums Board).

† See Govt. Notice No. 101, 1910, declaring Old Gaol, Pretoria, to be an asylum for reception or detention of lunatics.

“Prison” means any prison or place of confinement to which a person may be committed whether on remand or for trial safe custody punishment or otherwise under any other than civil process; and

“Prisoner” means any person so committed.

“Single Patient” means any person detained as a lunatic by order under this Proclamation in any place other than an asylum or prison as defined in this section.

Proclamation to apply to persons detained in asylum at time of taking effect thereof.

Urgency cases.

3. The provisions of this Proclamation shall apply to every person who at the taking effect thereof is detained in an asylum or place of confinement for lunatics, and every warrant or order granted for the detention of any such person shall be deemed to have been legally granted until set aside or varied under the provisions of this Proclamation.

4. In cases of urgency where it is expedient either for the welfare of a person alleged to be a lunatic or for the public safety that an alleged lunatic should be forthwith placed under care and treatment he may be received and detained in any asylum or prison upon an urgency order made (if possible) by the husband or wife, or by a relative of the alleged lunatic, accompanied by one medical certificate, provided that

(1) if an urgency order is not signed by the husband or wife or by a relative of the alleged lunatic, the order shall contain a statement of the various reasons why the same is not so signed and of the connection with the alleged lunatic of the person signing the order and the circumstances under which he signs the same;

(2) no person shall sign an urgency order unless he is at least twenty-one years of age and has within two days before the date of the order personally seen the alleged lunatic;

(3) no alleged lunatic shall be received under an urgency order unless it appears from the medical certificate accompanying the order that the certifying medical practitioner has personally examined the alleged lunatic not more than three clear days before his reception;

(4) the admission of an alleged lunatic on an urgency order shall forthwith be notified by the person receiving the patient to the magistrate of the district, who shall thereupon on production to him of the urgency order and the medical certificate proceed in the same manner as if the original application had been made to him for the issue of a summary reception order;

(5) an urgency order shall not remain in force for a longer period than seven days from its date.

PART I.

PROVISIONS RELATING TO LUNATICS WHO ARE NEITHER GOVERNOR'S PLEASURE NOR CRIMINAL LUNATICS.

Magistrate may order apprehension of person wandering at large and deemed to be a lunatic.

5. Any magistrate upon the information on oath of any person that a person wandering at large is deemed to be a lunatic, may by order require a constable to apprehend the alleged lunatic and bring him before the magistrate making the order or before any magistrate having jurisdiction where the alleged lunatic is.

6. If a constable is satisfied that it is necessary for the public safety, or the welfare of an alleged lunatic with regard to whom it is his duty to take any proceedings under this Proclamation, that the alleged lunatic should before any such proceedings are taken be placed under care and control, the constable may apprehend and convey the alleged lunatic to a prison or hospital, and the gaoler or officer in charge of the hospital shall unless there is no proper accommodation in such prison or hospital for the alleged lunatic receive and detain the alleged lunatic therein, but no person shall be so detained for more than forty-eight hours without the knowledge and authority of a magistrate. It shall not be lawful to detain any alleged lunatic apprehended under this or any other section of this Proclamation for a longer period than seven days without a magistrate's order under section *ten* unless a medical practitioner shall certify that it is impossible to decide as to the sanity or otherwise of the alleged lunatic within such period of seven days, in which case the magistrate may authorize the detention of the alleged lunatic for a further period not exceeding seven days.

Constable may under certain circumstances remove alleged lunatic to prison or hospital.

7. When under this Proclamation notice has been given to or an information on oath laid before a magistrate that a person wandering at large is deemed to be a lunatic, such magistrate may examine the alleged lunatic at his own house or elsewhere, and may proceed in all respects as if the alleged lunatic had been brought before him.

Magistrate may examine such person.

8. Every constable who has knowledge that any person not wandering at large is deemed to be a lunatic, and either is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, shall, without delay, give information thereof on oath before the nearest magistrate.

Constable to report to magistrate cases of lunatics not under proper care, though not wandering about.

9. Upon the affidavit, or information on oath, of the husband or wife, or other near relative, of any person, that such person is deemed to be a lunatic, or upon the affidavit or information on oath of any person that *a person is deemed to be a lunatic, and either is not under proper care, treatment and control, or is cruelly treated or neglected as aforesaid, any magistrate may himself visit the alleged lunatic, and shall, whether making such visit or not, obtain certificates from any two medical practitioners whom he thinks fit (one of whom shall, if practicable, be the District Surgeon), as to the mental state of the alleged lunatic. In case the services of two medical practitioners shall not be available, or immediately available, the magistrate may accept the certificate of one medical practitioner.

Upon information given, magistrate may order person to be examined by medical practitioner.

10. If upon the certificate of the medical practitioners or practitioner who examined the alleged lunatic, and after such further or other enquiry as the magistrate thinks necessary, he is satisfied that the alleged lunatic is a lunatic, and either is not under proper care, treatment and control,

Summary reception order. If magistrate satisfied that person is lunatic and not under proper care, he may order person to be detained.

* As in *Gazette*.

or is cruelly treated or neglected by any relative or other person having the care or charge of him, and that he is a proper person to be taken charge of and detained under care and treatment, or if the person having the care, treatment and control of the alleged lunatic consents to the issue of the order hereinafter mentioned, the magistrate may by order (in this Proclamation termed a summary reception order) direct the lunatic to be received and detained in some asylum or other place to be named in such order. Provided that a summary reception order shall not be granted, unless each medical practitioner on whose certificate it is proposed to grant such order, has personally examined the alleged lunatic not more than fourteen clear days before the date of the summary reception order, and that it shall not be competent for a magistrate to accept, for the purposes of such order, the certificate of any asylum medical officer, or private medical practitioner, to whose charge he proposes to commit the alleged lunatic by such order, or who has any interest in the payments to be made on account of such alleged lunatic; provided further that all proceedings under this and the preceding section with respect to alleged lunatics shall be conducted in private. And provided further, that if at any time after the issue of such order, the magistrate having jurisdiction to make such order, is satisfied that some relative or friend of the lunatic, who is willing to take such lunatic under his own charge, will take proper care of such lunatic and provide for his maintenance, it shall be lawful for such magistrate, on the recommendation of the District Surgeon, notwithstanding anything to the contrary in this Proclamation contained, to discharge such lunatic to the care and custody of such relative or friend.

Such order shall authorise detention for one month.

11. A summary reception order shall authorise the detention of the person named therein for a period not exceeding one month, and if the place named therein be not an asylum, it shall be lawful for the magistrate who has issued such order, at any time during its continuance, to authorize, by endorsement of such order, the removal of the lunatic named therein, from the place of detention specified therein, to an asylum; provided that the magistrate shall notify such removal within twenty-four hours to the *ex officio curator ad litem*; and provided further, that after the removal of such lunatic to an asylum, any regulations as to discharge, transfer or death of patients framed under the provisions of this Proclamation, shall apply to such persons so removed, and that notice of such discharge, transfer or death shall be given within twenty-four hours to the *ex officio curator ad litem*.

Magistrate granting such order, to send copy of order, report, and medical practitioner's report to the Attorney-General.

12. A magistrate granting any order for the detention of any alleged lunatic under this Proclamation shall, without delay, transmit a copy thereof, with copies of the depositions and medical reports upon which he acted in granting such order, and his own report to the Attorney-General. The magistrate shall also, within ten days, transmit as aforesaid the report of the district surgeon, or such medical practitioner

as shall have been in attendance upon the lunatic, as to his mental condition during his detention, such report to be based upon an examination of the lunatic, made not less than two or more than ten days after the date of the summary reception order. *If the lunatic shall have been committed by such order to detention in an asylum, the medical superintendent thereof shall, within seven days of the lunatic's admission thereto, transmit to the Attorney-General such medical report as is otherwise for the purposes of this section required to be made by the district surgeon and transmitted by the magistrate. Such magistrate shall also make such report (if any) to the Colonial Secretary, as may be prescribed† by any general regulations, and otherwise conform thereto.

13. The Attorney-General shall be *ex officio* the *curator ad litem* of such persons as may be detained under any order granted by a magistrate under this Proclamation, or further detained under a judge's order.

The Attorney-General *ex officio* *curator ad litem* of such lunatics.

14. A *curator ad litem* receiving any such order, depositions and reports as aforesaid from a magistrate shall, within the said period of one month, lay the same, with any further reports, depositions or statements which he may have deemed necessary to call for, before a judge in chambers for his consideration.

Curator ad litem receiving above reports, etc., to lay the same before judge in chambers.

‡15. The judge, upon consideration of such order, reports and evidence of lunacy therein appearing, may order as follows:—

The judge may:—

(1) If satisfied that an order for the further detention of the alleged lunatic may be made, forthwith make such order accordingly, and for such period as he may deem necessary;

Order further detention of alleged lunatic.

(2) direct that a summons be issued and served upon the alleged lunatic and the *curator ad litem* to appear in the court to be therein named to show cause why the alleged lunatic shall not be declared lunatic, and his detention as such confirmed, or, if necessary, that a curator be specially appointed for the care of his person and for the care or administration of his property;

Call upon *curator ad litem* and lunatic to appear before an appointed court.

(3) appoint a *curator bonis* for the temporary care or custody of any property of the alleged lunatic, and where it appears to the judge desirable that temporary provision should be made for the maintenance or other necessary purposes or requirements of the alleged lunatic or any member of his family out of any cash or available securities belonging to him in the hands of his bankers or of any other person, the judge may authorize any such banker or other person to pay to the *curator bonis* such sums as may be deemed necessary, and may give directions as to the application thereof for the alleged lunatic's benefit or the relief of his family;

Appoint a *curator bonis*.

(4) direct that the alleged lunatic be immediately discharged;

Direct discharge of alleged lunatic.

* Words in italics substituted by Act No. 3 of 1908, sec. 1.

† In *Gazette* the word "described" is given.

‡ See Act No. 3, 1908, sec. 3 (3).

Direct as to issue, service, etc, of summons.

(5) direct that any summons or other process be issued, and the proceedings in the case be continued free of any stamp duty or office fee; and order§ that service of any process under this section be made in such manner as may seem expedient;

Generally give necessary directions.

(6) generally give such directions as may appear necessary and proper.

Husband, wife, friend, or relative of person deemed to be lunatic, may apply directly to the court or judge for enquiry.

16. Nothing in this Proclamation contained shall prevent any husband, wife, or other relative of any person deemed to be a lunatic, or any friend of such person who has no husband, wife or near relative at or near the place where such person is residing, from applying by petition directly to the court or judge for an enquiry into such person's mental condition whether a summary reception order shall previously have been granted or not, and such court or judge may order therein as may be deemed fitting.

Any person detained under summary reception order may apply to Court for enquiry.

17. Any person detained under the order of a magistrate under this Proclamation or under a judge's order for a further detention granted as aforesaid, may apply to the court directly or through the *curator ad litem* for an enquiry into the cause and grounds of such person's detention, and such court may order therein as may be deemed fitting.

Where person is ordered to be further detained or is declared a lunatic, the Colonial Secretary may order his removal to asylum.

18. At any time after a magistrate has issued a summary reception order for the detention of a lunatic, or the Court has declared a person a lunatic, the Colonial Secretary may by warrant under his hand authorize the removal of such lunatic to some asylum, hospital or other safe place of confinement, there to be detained until legally discharged, or legally removed to some other asylum or place, provided that, in the case of a person dealt with by summary reception order, if such warrant of removal as aforesaid is issued prior to the grant of the judge's order notice of the issue of the warrant shall forthwith be sent by the said Secretary to the *ex officio curator ad litem*.

PART II.

PROVISIONS RELATING TO GOVERNOR'S PLEASURE AND CRIMINAL LUNATICS.

Procedure if found insane prior to arraignment.

19. If at any time prior to the arraignment of any person against whom criminal proceedings have been initiated for some crime or offence it shall appear to the gaoler or other custodian of such person that such person is insane, such gaoler or other custodian shall without delay report the fact to the magistrate of the district in which such person is confined; and such magistrate shall forthwith direct two medical practitioners, or one medical practitioner if two are not immediately available, to examine such person and to enquire into his sanity, and after such examination the said medical practitioners may certify in writing that he is insane; and if upon such certificates or certificate the magistrate is satisfied that such person is a lunatic the

§ As in *Gazette*; in Proc. 1900-1902 the word "other" is substituted.

magistrate shall by order direct such person to be kept in custody in some prison pending the signification of the pleasure of the Governor; provided that nothing in this or the next succeeding section shall be read as prohibiting the abandonment of the criminal charge at the discretion of the judge or magistrate concerned, and the adoption of the procedure specified in Part I of this Proclamation in those cases in which the crime or offence charged is of a petty nature and the interests of justice will not suffer by the abandonment of the charge.

20. If on the arraignment or during the trial of any person charged with any crime or offence, it shall appear to the judicial officer presiding at such trial, that such person is insane the question of such person's sanity shall be enquired into by a jury, especially empanelled for the purpose if the trial be before a judge and a jury, or otherwise, by the court, before which the trial is being held; and if such jury or court shall find that such person is insane the judicial officer presiding at such trial shall record such verdict or finding, and shall issue an order committing such person to some prison pending the signification of the Governor's pleasure.

Procedure if found insane during trial or on arraignment.

21. When in any indictment, or other criminal proceeding, any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane so as not to be responsible, according to law, for his action, at the time when the act was done, or the omission made, then if it appears to the jury or court before whom such person is tried that he did the act or made the omission charged, but was insane as aforesaid at the time when he did or made the same the jury or such court shall return a special verdict or finding to the effect that the accused was guilty of the act or omission charged against him, but was insane as aforesaid at the time when he did the act or made the omission; and the judicial officer presiding at the trial shall thereupon order the accused to be kept in custody in some prison pending the signification of the pleasure of the Governor.

Procedure when persons charged with offences are found to be insane by jury or court.

22. When an order committing a person as aforesaid pending the signification of the Governor's pleasure has been granted it shall be the duty of the keeper of the prison to which such person has been committed to send a copy of such order forthwith through the magistrate of the district to the Colonial Secretary for transmission to the Governor, and it shall be lawful for the Governor thereupon and from time to time to give such order for the safe custody of such person in such place and in such manner as the Governor may see fit.

Such persons to be kept in custody during Governor's pleasure.

23. When it shall appear to the superintendent of a convict station, to a gaoler, or to any other custodian of prisoners that a convicted prisoner in his charge is insane, such superintendent, gaoler, or custodian shall report the fact to the magistrate of the district in which such prisoner is confined; and such magistrate on receipt of such report, or on an order from the Colonial Secretary, shall forthwith direct two medical practitioners (one of whom shall if practicable be the district surgeon) to examine such prisoner, and to enquire as to his sanity, and

If found after conviction to be insane.

after such examination and enquiry the said medical practitioners may certify in writing that he is insane, provided that unless the prisoner is under sentence of death the magistrate may, in case the services of two medical practitioners shall not be available, direct one medical practitioner, who shall be, if practicable, the district surgeon, to perform such duty.

Magistrate to order him to be confined.

24. When a convicted prisoner is certified as aforesaid to be insane, the magistrate shall, by order under his hand, direct that the said prisoner be kept in custody in the prison in which he is confined as a criminal lunatic, until the Colonial Secretary, or if such prisoner be under sentence of death the Governor, shall by warrant issue directions as to his disposal. The magistrate issuing such order as aforesaid shall without delay transmit a copy of such order, together with copies of the medical certificates upon which he acted in granting such order, and of the criminal warrant under which such lunatic was detained in prison to the said Secretary.

If prisoner certified insane to be removed under warrant of Governor to some asylum and detained there as a lunatic.

25. When a convicted prisoner not under sentence of death is certified as aforesaid to be insane the Colonial Secretary may, if he thinks fit, direct such prisoner to be removed to an asylum named in the warrant, and thereupon such prisoner shall be removed to and received in such asylum and subject to the provisions of this Proclamation relating to discharge, and otherwise shall be detained therein, or in any other asylum to which he may be transferred as a criminal lunatic until he ceases to be a criminal lunatic.

Procedure in case of prisoner under sentence of death.

26. When a prisoner under sentence of death is certified as aforesaid to be insane the Governor may, if he thinks fit, direct such prisoner to be removed to an asylum named in the warrant, and thereupon such prisoner shall be removed to and received in such asylum, and subject to the provisions of this Proclamation relating to discharge, and otherwise shall be detained therein, or in any other asylum to which he may be transferred as a criminal lunatic, until he ceases to be a criminal lunatic.

When it is certified that a criminal lunatic (other than one in respect to whom a special verdict was returned) is sane the Colonial Secretary may order him to be remitted to prison.

27. When it is certified by two medical practitioners as aforesaid that a person being a criminal lunatic or Governor's pleasure lunatic (not being a person with respect to whom a special finding or verdict under section *twenty-one* of this Proclamation has been returned) is sane the Colonial Secretary, if satisfied that it is proper to do so, may, by warrant, direct such person to be remitted to prison to be dealt with according to law.

When a criminal lunatic shall cease to be a criminal lunatic.

28. A criminal lunatic shall, upon the expiration of the sentence of imprisonment to which he may be subject, cease to be a criminal lunatic; provided however that the order or warrant under which he was previously detained as a criminal lunatic, shall continue to operate as an authority for his detention

pending the issue of the judge's order hereinafter mentioned. If one month before the expiration of his sentence of imprisonment a criminal lunatic is still of unsound mind, the asylum superintendent or other custodian of such lunatic shall forthwith transmit a medical certificate of insanity with such report and other documents as may be deemed necessary to the Attorney-General, who shall without delay lay the same before a judge in chambers for his consideration, whereupon the said judge shall order the further detention of the said criminal lunatic as a case under Part I, or make such other order in accordance with section *fifteen* of this Proclamation as the said judge may see fit; and such order shall have effect on and after the date of the expiration of the said lunatic's sentence of imprisonment.

**If before seven days have elapsed after the date of the admission to an asylum of a criminal lunatic the warrant for his detention therein expires, he may be detained for observation till such seven days have elapsed and, if during such period of seven days he displays symptoms of insanity, the medical superintendent shall transmit a certificate to that effect to the Attorney-General who shall lay the same before a judge in chambers for his consideration.*

The judge shall thereupon order the further detention of such lunatic as a case under Part I or make such further order in accordance with section fifteen as he shall deem fit.

Pending the receipt of any order of the judge the warrant aforesaid shall continue in operation as an authority for such lunatic's detention. If within such period of observation he displays no symptoms of insanity, he shall, subject to the provisions of the Lunacy Law Amendment Act 1907, be discharged as not insane after admission.

29. The superintendent of an asylum or other place in which a criminal lunatic or a Governor's pleasure lunatic is detained, shall make a report to the Colonial Secretary at such times not being less than once a year and containing such particulars as the said Secretary may require of the condition and circumstances of every criminal lunatic and Governor's pleasure lunatic in such asylum or place; and the said Secretary shall at least once in every two years during which a criminal lunatic or Governor's pleasure lunatic is detained take into consideration the condition, history and circumstances of such lunatic for the purpose of determining whether he ought to be discharged or otherwise dealt with.

30. The Colonial Secretary may from time to time order the transfer of any criminal lunatic or Governor's pleasure lunatic detained in any asylum or other place, to any other asylum, and such criminal lunatic shall accordingly be received and detained in the asylum to which he is so transferred.

31. The Governor may discharge any criminal lunatic or Governor's pleasure lunatic, absolutely or conditionally, that is to say on such conditions as to the duration of such discharge, and otherwise as the Governor may think fit.

* Words in italics added by Act No. 3 of 1908, sec. 2.

Superintendent of asylum or other place in which criminal or Governor's pleasure lunatic is detained, to report to Colonial Secretary at least once a year. Colonial Secretary may order transfer of criminal lunatic or Governor's pleasure lunatic. Governor may discharge criminal lunatic absolutely or conditionally.

Conditions to be observed in conditional discharge.

32. Where a criminal lunatic or Governor's pleasure lunatic is conditionally discharged in pursuance of this Proclamation

(1) a report of his^ocondition shall be made to the Colonial Secretary, by such persons and at such times and containing such particulars as may be required by the warrant of discharge (or directed by the Governor), or by any general rules and regulations ;

(2) if any of the conditions of such discharge appear to the Governor to be broken or the conditional discharge is revoked, the Governor may direct him to be taken into custody and removed to some asylum or place named in the warrant, and he may thereupon be taken, and shall be received and detained in such asylum or place, as if he had been removed thereto under the provisions of this Proclamation.

Governor may make regulations for dealing with prisoners who appear from imbecility to be unfit for penal discipline.

33. The Governor may make, revoke and vary regulations for the treatment of persons sentenced to imprisonment, who appear in accordance with the said regulations to be from imbecility of mind, either unfit for penal discipline, or unfit for the same penal discipline as other prisoners.

PART III.*

PROVISIONS FOR THE CARE AND ADMINISTRATION OF LUNATIC'S PROPERTY.

Court may appoint curator over property of lunatic.

34. The court may appoint a curator for the care or administration of the property of any person declared lunatic or of a person lawfully detained as a criminal lunatic or Governor's pleasure lunatic, with or without security as the court may direct, and may confer upon such curator authority to do any specified act, or exercise any specified power or may confer a general authority to exercise on behalf of the lunatic until further ordered, all or any of such powers without further application to the court ; provided that when a lunatic, detained by order of the court or of a judge of whose property no curator has been appointed, possesses property the estimated value of which does not exceed five hundred pounds in respect of the corpus thereof or fifty pounds per annum in respect of the income thereof, a judge in chambers or the Master of the High Court of the Transvaal may, on the application of the official *curator ad litem*, appoint a curator of the property of the lunatic.

Court may under certain circumstances appoint curator over property without appointing curator over person.

†35. Where upon an enquiry the court shall be of opinion that the person to whom it relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself or to others, such court may make such order as it thinks fit for the care or administration of the property of the lunatic including all proper provisions for his maintenance, but it shall not be necessary unless the court shall think proper to do so to make an order as to the custody of his person.

* See Act No. 3, 1908, sec. 4.

† In *Gazette* the word "when" is given.

36. When any person being a member of a partnership is declared a lunatic by the court, the court may by the same order, or by an order subsequently granted, dissolve the partnership.

Court may dissolve a partnership if member thereof declared a lunatic.

37. When the court has granted an order for appointing a curator for the care or administration of the property of a lunatic, an office copy of such order shall forthwith be lodged with the Master of the High Court.

Copy of order appointing curator over property to be lodged with Master.

38. The Master shall grant to such curator a certificate that he has been so appointed, and is authorised as such to have the custody and administration of the lunatic's estate.

Master to grant certificate of appointment to curator.

39. Every such curator shall be under the like duty and obligation as an executor appointed for the administration of the estate of a deceased person, to lodge with the said Master an inventory or additional inventory of the property of a lunatic and accounts of his administration, and in respect of any such inventory or account the like stamps and fees shall be payable as in the case of the estate of a deceased person.

Curator to file inventory, etc., with Master.

40. Every such curator shall be allowed the like remuneration to be taxed by the said Master as in the case of an executor.

Curator to be allowed same remuneration as executor.

41. When any lunatic, for the care or administration of whose estate a curator has been appointed shall die intestate, or having left a will there shall be no executor, or none willing to act, such curator shall continue the administration of the estate of such lunatic, and distribute the assets thereof as if he had been appointed an executor *dativo*, and it shall be lawful for the Master to require the same security from such curator as he would have been entitled to require from an executor *dativo*.

If lunatic die intestate or has no executor, *curator bonis* to act as executor.

42. The court may authorise and direct any curator appointed as aforesaid to do all or any of the following things :—

Court may authorise curator to do following acts.

(1) Sell any property belonging to the lunatic.

(2) Make exchange or partition of any property belonging to the lunatic or in which he is interested, and give or receive any money for equality of exchange or partition.

(3) Carry on or discontinue any trade or business of the lunatic.

(4) Grant leases of any property of the lunatic.

(5) Perform any contract relating to the property of the lunatic entered into by the lunatic before his lunacy.

(6) Exercise any power or give any consent required for the exercise of any power where the power is vested in the lunatic for his own benefit or the power is in the nature of a beneficial interest in the lunatic.

(7) Raise money on mortgage of the lunatic's property for payment of his debts or payment of any debt or expenditure incurred for the lunatic's maintenance or otherwise for his benefit or payment of or provision for the expenses of his future maintenance.

(8) Apply any money for or towards the maintenance or the benefit of the lunatic.

(9) Make such reports concerning the lunatic's estate to the court or to the Master as such court shall deem fit.

Proclamation not to be taken to limit power of court as to declaring persons insane or appointing curators.

43. Nothing in this Proclamation contained shall be deemed to limit or abridge the power by law possessed by the court in regard to declaring persons of unsound mind or to the appointment of curators to the person or property of any lunatic.

PART IV.

OFFENCES AND PENALTIES.

Penalty for detaining alleged lunatic, except under provisions of this Proclamation.

44. Every person who, except under the provisions of this Proclamation, receives or detains a lunatic or alleged lunatic in an asylum or for payment takes charge of, receives to board and lodge, or detains a lunatic or alleged lunatic shall upon conviction be liable to a penalty not exceeding fifty pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding six months or to such imprisonment without the option of a fine.

Penalties for false statements, etc.

45. Every person guilty of any of the following acts or offences shall upon conviction be liable to a penalty not exceeding one hundred pounds, and in default of payment to imprisonment with or without hard labour for a period not exceeding twelve months or to such imprisonment without the option of a fine :—

(1) Making any wilful misstatement of any material fact in any petition, application, statement of particulars, report or reception order under this Proclamation.

(2) Making a wilful misstatement of any material fact in any medical certificate or other certificate or in any statement or report of bodily or mental condition under this Proclamation.

(3) Knowingly making in any book, statement or return any false entry as to any matter as to which he is by this Proclamation or by any rules or regulations made under this Proclamation required to make an entry.

(4) Wilfully obstructing any magistrate, curator, *curator ad litem*, visitor, medical practitioner, constable, or other person specially authorized by the Governor or under any order of court in the exercise of any of the powers conferred by this Proclamation or by any rules or regulations made thereunder.

Penalty where no special penalty provided.

46. Every person who shall contravene any of the provisions of this Proclamation, in respect of which no other penalty or punishment is thereby or by any other law provided, or who shall contravene any of the provisions of any rules or regulations made by the Governor under this Proclamation, shall, upon conviction, be liable to a penalty not exceeding twenty pounds, or in default of payment, to imprisonment with or without hard labour for any period not exceeding three months.

Penalty if nurses, etc., or persons in charge illtreat lunatic.

47. Any officer, nurse, attendant, servant, or other person employed in any asylum or other place, or any person having the care or charge of a lunatic, or alleged lunatic, whether by reason

of any contract or any tie of relationship or marriage, or otherwise, who shall illtreat or wilfully neglect any such lunatic or alleged lunatic, shall upon conviction be liable to a penalty not exceeding fifty pounds, or in default of payment to imprisonment with or without hard labour for any period not exceeding six months, or to such imprisonment without the option of a fine.

48. Any officer, attendant, servant, or other person employed in any asylum or other place who shall wilfully permit, or assist or connive at the escape or attempted escape of any lunatic, or who shall secrete a lunatic, shall upon conviction be liable to a penalty not exceeding twenty pounds, or in default of payment to imprisonment with or without hard labour for a period not exceeding three months, and to instant dismissal from any position such convicted person may then occupy.

Penalty for conniving at escape of lunatic.

49. It shall not be lawful to employ any male person in any asylum in the personal custody or restraint of any female patient, and any person employing a male person contrary to this section shall be liable to a penalty not exceeding twenty pounds, and in default of payment to imprisonment with or without hard labour for a period not exceeding three months: Provided that this section shall not extend to prohibit or impose a penalty on the employment of male persons on such occasions of urgency as may in the judgment of the superintendent of the institution render such employment necessary, but the employment shall be reported to the Colonial Secretary.

Male person not to be employed in personal custody of female patient.

50. If any officer, attendant, or other person employed in any asylum, or any person having the care or charge of, or attending upon any single patient, carnally knows, or attempts to have carnal knowledge of any female under care or treatment as a lunatic, he shall upon conviction be liable to imprisonment with or without hard labour for any period not exceeding five years; and no consent or alleged consent of such female thereto shall be a defence in any prosecution for such offence.

Penalty on person having charge of lunatic for carnally knowing female patient.

PART V.

GENERAL.

*51. Whenever any person shall, with the previous consent of the Colonial Secretary, be brought into this Colony from any other Colony or Territory in South Africa to which the Governor may by proclamation apply the provisions of this section by virtue of a warrant under the hand of a person duly authorized in such Colony or Territory to sign the same, setting forth that such person has been judicially declared in such Colony or Territory to be a lunatic, such person shall within this Colony be deemed to be legally detained under such warrant for a period of one month from the date thereof in any asylum or other safe place of confinement named in such warrant. On the admission of such person into the asylum or other safe place of confinement aforesaid, the medical superintendent or officer in charge of such asylum or other safe place

Lunatics from neighbouring Colonies.

* This section has been applied to Southern Rhodesia by Proc. (Admn.) No. 9, 1902, and to Cape Colony by Proc. (Admn.) No. 64, 1907.

† As in *Gazette*; word "be" omitted in Proc. 1900-1902.

of confinement shall forthwith forward the warrant with the supporting documents to the Attorney-General for submission to a judge in chambers, and thereupon all the provisions of this Proclamation shall apply as if such person were a person in respect of whom a summary reception order had been granted in terms of this Proclamation.

No person to be detained in asylum unless under order of court or judge.

52. Subject to any exception in this Proclamation mentioned, it shall not be lawful to receive or detain in any asylum, hospital, or other place, or as a single patient any lunatic, or alleged lunatic, except under an order made by a magistrate, a judge, or a court.

Every person receiving a patient into his house to transmit a notice thereof to the Colonial Secretary. Every such patient to be visited by independent medical practitioner.

53. Every person who shall take care or charge of any lunatic as a single patient shall, within twenty-four hours after so taking[†] charge of such person, transmit through the post a notice of such admission to the Colonial Secretary. True copies of the order, statement, and medical certificate upon which such person shall have been so received shall be transmitted to the said Secretary by the magistrate making the order.

Insanity of person residing in private dwelling-house.

54. Every such lunatic shall as often as may be provided by regulations under this Proclamation, or as may be directed by the Colonial Secretary, be visited by a medical practitioner not deriving, and not having a partner, father, son, brother, or other relative who derives any profit from the care and charge of such lunatic.

55. If the insanity of a person residing in a private dwelling with relatives or others, who receive no remuneration for his maintenance and care, has endured for a period of six months, and is of such a nature as to require compulsory confinement in the house, or restraint or coercion of any kind, the person who has charge of the patient shall intimate such detention to the Colonial Secretary, and shall transmit to the said Secretary a certificate signed by at least one medical practitioner as to the condition of the person so detained, and the reasons (if any) which render it desirable that such person shall remain under private care. The said Secretary may thereupon order that such person be so detained for a further period not exceeding six months, at the expiration of which period, if the insanity still continues, the necessary steps must be taken by the person having charge of the patient to obtain an order under section *ten*.

Person voluntarily submitting to treatment.

56. The medical superintendent of an asylum may with the previous assent in writing of the Colonial Secretary, which assent shall not be given without written application by the patient, receive and lodge as a boarder for the time specified in the assent, any person who is desirous of voluntarily submitting to treatment, but whose mental condition is not such as to justify the issue of certificates of insanity. Provided always

(a) that if such person makes a written application to the medical superintendent, he may be received as a boarder temporarily for a period not exceeding seven days, pending the receipt of the* Secretary's assent ;

[†] In *Gazette* these words read "taken so". § As in *Gazette*.

* The word "said" appears after "the" in Proc. 1900-1902, but does not appear in the *Gazette*.

(b) that every such boarder shall be produced if required to the official visitors at their visits to the asylum ;

(c) that no such boarder shall be detained for more than three days after having given written notice to the medical superintendent of his intention or desire to leave, unless detained under an order made by the court, or judge, or magistrate ;

(d) that notices of admission, discharge and death with respect to all such boarders shall be made to the Colonial Secretary in the same manner as in the case of lunatics ;

(e) that every such boarder shall be discharged at the expiration of the time specified in the said Secretary's assent, unless a renewed application is made and assent given.

57. Every medical certificate or report under this Proclamation shall be signed by a medical practitioner, and shall state the facts upon which the certifying medical practitioner has formed his opinion that the alleged lunatic is a lunatic, distinguishing facts observed by himself from facts communicated by others ; and no order made under this Proclamation shall be made upon a certificate founded only upon facts communicated by others.

Requirements of medical certificates under Proclamation.

58. Every medical certificate or report made under and for purposes of this Proclamation shall be evidence of the facts therein appearing, so far as they may be facts within the knowledge of the person making the certificate, and of the judgment therein stated to have been formed by the certifying medical practitioners on such facts, as if the matters therein appearing had been verified on oath.

Medical certificate evidence of certain facts.

59. The medical certificates or reports under this Proclamation shall not be received or acted upon if made by any person related to the supposed lunatic within the fourth degree of consanguinity or affinity, or the partner or assistant of a person so related ; and neither of the persons signing such certificates or reports shall be so related to, or the partner or the assistant of the other of them.

Medical certificates not to be signed by person related to alleged lunatic within fourth degree. Under what circumstances mechanical means of bodily restraint allowed.

60. Mechanical means of bodily restraint shall not be applied to any lunatic unless the restraint is necessary for the purpose of surgical or medical treatment, or to prevent the lunatic from injuring himself or others ; and in every such case

(1) a medical certificate shall as soon as it can be obtained be signed, describing the mechanical means used, and stating the ground upon which the certificate is founded ;

(2) the certificate shall be signed in the case of a lunatic in an asylum or other place of confinement by the medical officer thereof, and in the case of a private patient by his medical attendant ;

(3) a full record of every case of restraint by mechanical means shall be kept from day to day ;

(4) a copy of the certificates and records under this section shall be sent to the Colonial Secretary at the end of every quarter ;

(5) in the application of this section "mechanical means" shall be such instruments as the Governor may by regulation determine.

Any person appointed under this Proclamation to make inquiry may examine on oath and summon witnesses.

61. Any magistrate or any commissioner or person appointed by the court or by the Governor to make any inquiry under this Proclamation, or in respect of any lunatic, may, if he deems it necessary so to do, summon any person to appear before him to testify upon oath touching any matter respecting which such magistrate, commissioner, or other person is, under this Proclamation, or by any commission or order issued by any such court, or by the Governor, authorized to inquire (which oath such magistrate, commissioner, or other person is hereby empowered to administer).

Penalty for not obeying such summons.

62. Every person who does not appear pursuant to any such summons as is in the last section mentioned, or does not assign some reasonable excuse for not appearing, or who appears and refuses to be sworn or examined shall, on conviction in the court of any resident magistrate having jurisdiction, be liable to a penalty not exceeding twenty pounds, and in default of payment, to imprisonment with or without hard labour for a period not exceeding three months.

Expenses of witnesses.

63. Every person so summoned as aforesaid shall be entitled to be paid his expenses as if a witness summoned to attend upon a trial in a criminal case.

Requirements and execution of warrant under this Ordinance.

64. A warrant of the Governor under this Proclamation may be under the hand of the Colonial Secretary. Every such warrant, and every magistrate's order for the detention or removal of a lunatic may be executed by the person to whom it is addressed, or by any constable, and when it relates to a person not in custody may be executed in like manner as if it were a warrant for the arrest of a person charged with an offence, and it shall be the duty of every constable to aid in the execution of every warrant under this Proclamation.

Powers of Colonial Secretary under Proclamation may be exercised by another person appointed by Governor.

†65. The Governor may from time to time direct that all or any of the powers, duties and authorities by this Proclamation vested in or required to be performed by the Colonial Secretary, shall be exercised and performed by any person the Governor shall think fit, subject to any restrictions or limitations he may impose, or that such powers, duties and authorities may, as to certain parts of the Colony be exercised by the said Secretary, and as to certain other parts by some person or persons other than the said Secretary.

Escaped lunatic may be recaptured.

66. If any person escapes while being conveyed to an asylum or place in pursuance of this Proclamation, or if any person lawfully detained in an asylum or other place for lunatics escapes, he may be re-taken within twenty-eight days after his escape by the superintendent of such asylum, or person in charge of such other place, or any officer or servant belonging thereto, or by any person assisting such superintendent, person in charge, officer or servant, or by the duly appointed escort of such escaped person, or by any constable, and conveyed to and received and detained in such asylum or other place. If not re-taken within twenty-eight days he shall be formally discharged, and before

† By Proc. (Admn.) No. 65, 1906, the powers of the Colonial Secretary are to be performed by that officer or by the Assistant Colonial Secretary; see also Act. No. 16, 1907.

re-admission a new order must be obtained ; provided that in the case of any criminal or Governor's pleasure lunatic who escapes he may be re-captured as aforesaid at any time after escape.

*67. *When a person is lawfully detained in an asylum or any other place the cost of maintaining him thereat shall be defrayed out of the general revenue of the Colony; provided that such charges as may have been agreed upon between the Colonial Secretary and the relatives or curators of such person may be made in respect of any special accommodation or attendance furnished to him. Such a person shall, so long as such charges are paid, be deemed a "paying patient," but if and as long as the payment of the charges are in arrear, the special accommodation or attendance shall be discontinued and the person shall be deemed a "non-paying patient."*

Cost of maintenance in an asylum or other place.

68. Any action brought by any person who has been detained as a lunatic against any person for anything done under this Proclamation shall be commenced within three months next after the release of the person bringing the action.

Action by lunatic, limitation of.

69. *Repealed by Act No. 3, 1908, section seven.*

Appointment of visitors. Governor may make, etc., regulations.

†70. The Governor may, from time to time, make and alter or rescind rules or regulations for all or any of the following purposes :—

- (1) For the discharge of lunatics on recovery, or on the application of relatives or friends, or on probation ;
- (2) for the removal or transfer of lunatics from one asylum or place to another asylum or place, including the temporary transfer of patients to any specified place for such period as may be deemed expedient for the benefit of their health ;
- (3) *Repealed by Act No. 3, 1908, section seven.*
- (4) for prescribing the books to be kept in asylums or otherwise in reference to any lunatic and the entries to be made therein, and the accounts, returns, reports, extracts, copies, statements, notices, documents, and information to be sent to the Colonial Secretary, or other authority or person as the Governor may direct ;
- (5) as to the persons by whom the times when and the manner in which such entries, accounts, returns, reports, extracts, copies, statements, notices, documents, and information, are to be made and sent in regard to any asylum or any lunatic or alleged lunatic ;
- (6) as to the terms of payment and accommodation for paying patients in any asylum ;
- (7) for prescribing forms for the purpose of this Proclamation ;
- (8) for prescribing the duties and discipline of officials employed in any asylum ;
- (9) generally for the due administration and efficient working of this Proclamation and the care and comfort of lunatics.

71. This Proclamation may be cited for all purposes as "The Lunacy Proclamation, 1902".

Short title.

* This section substituted by Act No. 3 of 1908, sec. 5.

† Rules and regulations were made under this section and promulgated by Govt. Notices Nos. 227, 1902 (*Gazette*, 6/6/02) ; 195, 1904 (*Gazette*, 19/2/04) ; 817, 818, 1906 (*Gazette*, 17/8/06) ; 1014, 1906 (*Gazette*, 5/10/06) ; 353, 1907 (*Gazette*, 22/3/07) ; 120, 1909 (*Gazette*, 22/1/09).

Proclamation
(Trans.) No.
37 of 1902.

PROCLAMATION No. 37 OF 1902.*

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 13th June, 1902.)

Preamble.

WHEREAS by Proclamation Transvaal No. 12 of 1901, dated the 1st July, 1901, the period between the 11th October, 1899, and a date to be thereafter notified in the *Gazette*, was not to be taken into account in computing the period within which certain payments were to be made and certain rights exercised under the contracts therein referred to :

And whereas by Government Notice No. 223 of 1902, the first day of June, 1902, was notified as the date from which time would again commence to run under the provisions of the aforesaid Proclamation :

And whereas it has been made to appear to me that owing to the existence of Martial Law and the disturbed state of some districts of the Colony further time should be given :

Now, therefore, by virtue of the authority in me vested I hereby declare, proclaim and make known :

Alteration of
date for
computing
period
within which
options may
be exercised.

1. That the 1st day of August, 1902, shall be taken to be the date referred to in section *one* of Proclamation Transvaal No. 12 of 1901, as "the date to be hereafter notified in the *Gazette*".

2. The aforesaid Government Notice, No. 223 of 1902, is hereby withdrawn and is to be treated as if it had not been issued.

* See Ord. No. II (Priv.), 1905 ; Act No. 6, 1910.

PROCLAMATION No. 39 OF 1902.

Proclamation
 (Trans.) No.
 39 of 1909.

BY HIS EXCELLENCY THE ADMINISTRATOR OF THE TRANSVAAL.

(Dated 19th June, 1902.)

WHEREAS it is desirable to add to the powers granted to the Town Council of Johannesburg in and by Proclamation No. 16 of 1901 :

Preamble.

Now, therefore, by virtue of the authority vested in me, I do hereby proclaim, declare, and make known as follows :—

1. The term "the Council", as used in this Proclamation, shall mean the Town Council of Johannesburg, established under Proclamation No. 16 of 1901.

Definition of Council.

2. *Repealed by Ordinance No. II (Private), 1906, section one.*

Amending Pr. No. 16, 1901.

3. *Repealed by Ordinance No. II (Private), 1906, section one*

Amending Pr. No. 16, 1901.

4. *Repealed by Ordinance No. II (Private), 1906, section one.*

Amending Pr. No. 16, 1901.

5. *Repealed by Ordinance No. II (Private), 1906, section one.*

Saving clause about pounds.

6. *Repealed by Ordinance No. II (Private), 1906, section one.*

Power to close streets or roads.

7. *Repealed by Ordinance No. II (Private), 1906, section one.*

Inspection of minutes.

8. *Repealed by Ordinance No. II (Private), 1906, section one.*

Electric light and tramways.

9. In all cases in which permission has been obtained under regulations or otherwise from the late Stadsraad or its predecessors, to erect colonnades, balconies, verandahs, or other projections or wires, over any street, or to lay down pavements, kerbing or gutters, or acquire openings in or rights under pavements, or to acquire any other right in any portion of any street within the municipality, and no work has at the date hereof been done or executed under or by virtue of such permission, the same shall as from the date hereof lapse and determine.

Permission granted by late Stadsraad to erect colonnades, balconies, etc., declared lapsed where no work done.

10. In all such cases as aforesaid in which any work has, under and by virtue of any such permission, been done or executed at the date hereof, the Council shall have the power, either summarily or on such notice as it may deem fit, to cancel the said permission and to remove or cause to be removed at the expense of the person claiming the benefit of any such permission, all structures erected, or openings or excavations made in pursuance of any such permission, on paying to the person or persons to whom such permission has been granted, or his or their legal successors in title, compensation in respect of any of such structures, openings or excavations so removed

Where work done, Council has power to cancel permission on payment of compensation.

Council may confirm permission and may make charge for same.

as hereinafter set forth. The Council, may, however, in its discretion, confirm for such period and subject to any such modification as it may deem fit, any such permission, and in that event shall have the power to charge in respect of the exercise thereof such annual or other sum and to impose such other conditions as the Council may from time to time determine, either in place and stead of, or in addition to, any obligation expressed in the terms of such permission or otherwise; provided, however, that no person shall in any event by the continued exercise of any rights in pursuance of any such permission acquire any prescriptive right to the use of any portion of any street.

Amount of compensation determined by arbitration where parties cannot agree.

11. In case it shall become necessary for the Council to pay any compensation to any person or persons as aforesaid, the amount thereof shall be determined by mutual agreement if possible, but failing such agreement then by arbitration as hereinafter provided; provided, however, that the Council shall in no case pay compensation for or in respect of any direct or indirect or consequential damages which may be sustained through the removal of any structure, opening or excavation as aforesaid, but only for or in respect of the actual loss incurred on the value of such structure, opening or excavation, and the actual cost of removing the same and of placing any building affected by such removal in such condition as regards safety, or otherwise as may be required to comply with any of the Council's by-laws regarding buildings.

Only actual value of structure, etc., paid.

Inspection of wells, etc.

12. *Repealed by Ordinance No. II (Private), 1906, section one.*

Inspection of water supply.

13. *Repealed by Ordinance No. II (Private), 1906, section one.*

Prosecutions.

14. *Repealed by Ordinance No. II (Private), 1906, section one.*

Plans of existing townships to be deposited with the Council.

*15. Every owner of a now existing township within the municipality, containing one or more streets or thoroughfares shall within sixty (60) days after the date of this Proclamation file at the office of the Town Engineer, a plan certified by a Government Surveyor showing all the Stands or Lots and all the roads, streets, or thoroughfares and all squares or other open spaces within such township existing on the 8th day of May, 1901, or in case of any township laid out since that date existing at the date of this Proclamation and set apart by such owner for the use of the public, or represented by such owner either on a plan or otherwise as intended for public use and every such first-mentioned plan, if, and when approved by the Council or settled by arbitration as hereinafter provided, shall for all municipal purposes, be deemed to be the authorized plan of such townships, and all the streets, roads, thoroughfares, squares and open spaces shown thereon and set apart or represented as aforesaid, shall be vested in and be under the control and management of the Council. For the purpose of this section the term "township" shall mean any piece of land divided into stands or lots for purposes of sale or lease, and

* See Ord. No. 21 of 1903, sec. 1, as to deposit of plans of townships in adjoined areas of municipality.

“owner” shall mean the holder or holders whether in freehold or otherwise of every such piece of land who shall have so divided the same, or his or their successors in title other than the holders of such stands or lots.

*16. It shall be competent for the Council in case it shall consider that any such plan so filed as aforesaid is defective in that it does not show or only partially or incorrectly shows any street, thoroughfare, square or other open space which was in existence on the date above referred to, and which under the previous section is vested in and is under the control and management of the Council to make objection to such plan on the ground of such defect by serving a notice of such objection, setting forth in detail the grounds thereof at the office or place of business in Johannesburg of the person or company filing such plan within ninety days after the date of the filing thereof.

Provisions for objections being made by the Council.

*17. In case within ninety (90) days after the filing of any plan as aforesaid, the Council shall not serve or cause to be served at the office or place of business in Johannesburg of the person or company filing the same, any notice or objection as aforesaid to such plan, then the same shall be deemed and taken to be approved by the Council and become the authorized plan of the township as aforesaid.

If no objections by Council within ninety days after filing of plan it shall be taken to be approved of.

*18. In case within the said period of ninety (90) days as aforesaid, the Council shall serve, or cause to be served, a notice of objection as aforesaid, to any such plan at the office or place of business in Johannesburg of the person or company filing the same then unless the difference or matter in regard to which such objection is made can forthwith be settled between the Council and such person or company, the same and the plan in question shall be referred to and settled by arbitration as hereinafter provided, and the plan so settled shall become the authorised plan as aforesaid of the township therein referred to.

If objections and differences cannot be settled, reference to arbitration.

†19. In case of any dispute or difference arising in regard to any matter necessitating settlement by arbitration as aforesaid, the provisions of the clauses relating to arbitration in the “Expropriation of Lands and Arbitration Clauses Proclamation, 1902”, shall, except as hereinafter provided, apply *mutatis mutandis* to arbitration proceedings by the Council, as if the said clauses were inserted in this Proclamation.

Arbitration clauses.

*20. Upon all proceedings before any arbitrator or arbitrators or umpires, as the case may be, each party may appear in person, or by counsel or solicitors, or admitted and licensed law agents, and may produce such witnesses and documentary evidence as the arbitrator or arbitrators, or umpire as the case may be, shall allow.

Before arbitrators each party may appear by counsel.

*21. The costs of and incidental to any reference to arbitration shall be, in the discretion of and be settled by the arbitrator or arbitrators or umpire, as the case may be.

Costs of arbitration.

* Applied *mutatis mutandis* to depositing of plans of townships in added areas of municipality by Ord. No. 21 of 1903, sec. 2.

† As amended by Ord. No. II (Priv.), 1906, sec. 93 (2).

* Gazette.

Definitions.

22. *Repealed by Ordinance No. II (Private), 1906, section one.*

Indemnity
clause.

23. Any act, matter or thing done or executed by the Council prior to the date of this Proclamation, which may at the date of the execution thereof have been beyond the powers and authorities of the Council, but which would have been valid had this Proclamation then been in force is hereby declared to have been and to be valid.

Title.

24. This Proclamation shall be read as one with Proclamation No. 16 of 1901, and shall be cited for all purposes as the "Johannesburg Municipality Amendment Proclamation, 1902".

No. 1 of 1902.]

[Promulgated 4th July, 1902.]

ORDINANCE

TO PROVIDE FOR THE DISCHARGE OF THE DUTIES IMPOSED ON CERTAIN OFFICERS UNDER PROCLAMATION BY CERTAIN OTHER OFFICERS.

(Assented to 21st June, 1902.)

BE IT ENACTED by the Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. All the duties and functions hitherto by law assigned to and exercised by the Secretary to the Transvaal Administration the Legal Adviser to the Transvaal Administration and the Controller of the Treasury shall from and after the taking effect of this Ordinance be discharged and performed respectively by the Colonial Secretary the Attorney-General and the Colonial Treasurer.

Duties hitherto performed by certain members of the Transvaal Administration to be performed by certain members of Executive Council.

2. The appointments of all magistrates assistant magistrates justices of the peace and other officials by the Administrator of the Transvaal shall be to all intents and purposes as valid as if such appointments had been made by the Governor of the Transvaal.

Appointments made by Administrator to be deemed as valid as if made by Governor.

3. This Ordinance may be cited for all purposes as the Title.
“Officials Duties Ordinance 1902.”

No. 2 of 1902.]

[Promulgated 4th July, 1902.]

†ORDINANCE

TO ESTABLISH A SUPREME COURT FOR THE TRANSVAAL AND A HIGH COURT FOR THE DISTRICT OF WITWATERSRAND.

(Assented to 21st June, 1902.)

WHEREAS the Administration of Justice Proclamation 1902 makes provision for the administration of justice within this Colony pending the establishment of the Supreme Court of the Transvaal :

And whereas it is desirable to establish the said Supreme Court :

Be it enacted by the Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. There shall be and there is hereby created erected and constituted within this Colony a court which shall be called "The Supreme Court of the Transvaal" and which shall consist of one chief justice and so many puisne judges as the Governor may from time to time appoint not being less than three.

2. There shall be and is hereby created erected and constituted within this Colony a court for the district of Witwatersrand which shall be constituted of a single judge of the Supreme Court and shall be called the "Witwatersrand High Court".

*3. The Administration of Justice Proclamation 1902 shall form part of and be read as one with this Ordinance and shall apply to the courts established by this Ordinance with the following adaptations :—

(1) For "High Court of the Transvaal" or "High Court" wherever those expressions occur in the said Proclamation there shall be substituted "Supreme Court of the Transvaal" or "Supreme Court" respectively.

(2) For "Witwatersrand District Court" or "District Court" wherever those expressions occur in the said Proclamation shall be read "Witwatersrand High Court" or "High Court" respectively.

(3) For the expression "Judge President" wherever it occurs in the said Proclamation shall be substituted "Chief Justice".

4. All proceedings commenced in the High Court of the Transvaal or in the Witwatersrand District Court shall be continued respectively in the Supreme Court of the Transvaal and the Witwatersrand High Court as if they had been originally commenced in the latter courts and the rules of the High Court of the Transvaal and the Witwatersrand District Court shall until amended be *mutatis mutandis* the rules respectively of the Supreme Court and of the Witwatersrand High Court.

† See South Africa Act, 1909, Chapter VI.

* See also Ord. No. 1 of 1903; Ord. No. 10 of 1903; Ord. No. 31 of 1904; and Act No. 14 of 1909.

Establishment of Supreme Court.

Establishment of High Court for Witwatersrand district.

Administration of Justice Proclamation 1902 to form part of this Ordinance.

Proceedings already commenced in High Court of Transvaal or District Court to be continued in Supreme Court and High Court.

5. Wherever in any law the High Court of the Transvaal or Witwatersrand District Court is mentioned the Supreme Court of the Transvaal or Witwatersrand High Court shall respectively be meant thereby. Meaning of Supreme Court and Witwatersrand High Court.
6. Upon the taking effect of this Ordinance the Judge President of the High Court of the Transvaal shall without any further appointment or taking of oaths become the Chief Justice of the Transvaal and the judges of the said High Court shall similarly become the judges of the Supreme Court of the Transvaal; and all officers of the said High Court and of the Witwatersrand District Court shall similarly become officers of the Supreme Court of the Transvaal and of the Witwatersrand High Court respectively and in every law in which the expression "Judge President of the High Court" "judge or members of the High Court" is used Chief Justice of the Transvaal or judge of the Supreme Court of the Transvaal shall respectively be taken to be meant thereby. Judge President and members of High Court to become *ipso facto* Chief Justice and judges of Supreme Court.
7. Notwithstanding anything to the contrary contained in section *eighteen* of the Administration of Justice Proclamation 1902 it shall be competent for the Supreme Court the Witwatersrand High Court or any Circuit Court hereafter to be established to allow the use of the Dutch language at the hearing of any civil or criminal suit before it whenever it appears to such court to be necessary for the better and more effectual administration of justice. When Dutch language may be used at hearing of certain cases.
8. This Ordinance shall for all purposes be cited as the "Establishment of the Supreme Court and High Court Ordinance 1902" and shall take effect from and after the first day of July 1902. Title.

No. 3 of 1902.]

[Promulgated 4th July, 1902.

ORDINANCE

TO PROVIDE FOR THE APPOINTMENT OF NATIVE COMMISSIONERS AND SUB-COMMISSIONERS AND TO DEFINE THEIR JURISDICTION AND POWERS.

(Assented to 3rd July, 1902.)

WHEREAS it is advisable in certain districts in this Colony where large numbers of natives reside to appoint native commissioners and sub-commissioners and to define their powers and jurisdiction :

Be it enacted by the Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

Governor may appoint native commissioners and sub-commissioners.

1. It shall be lawful for the Governor from time to time to appoint for any district in this Colony in which a large number of natives reside a native commissioner and so many native sub-commissioners as the Governor may consider advisable.

Powers jurisdiction and duties of commissioners and sub-commissioners.

2. The powers and jurisdiction conferred and the duties imposed on commissioners and sub-commissioners of natives by Law No. 4 of 1885 and any other law are hereby conferred and imposed on native commissioners and sub-commissioners respectively appointed under this Ordinance.

Commissioners and sub-commissioners to be resident justices of the peace.

*3. Every native commissioner and sub-commissioner appointed under this Ordinance shall on such appointment be a resident justice of the peace within the district for which he is appointed excluding therefrom an area of twenty miles from the place in such district at which the court of resident magistrate is established.

Punishment of lashes.

4. *Repealed by Act No. 29, 1907, section one.*

Commissioners and sub-commissioners authorized to solemnize native marriages.

5. Every native commissioner and sub-commissioner shall within the district for which he is appointed be deemed and taken to be a person appointed to solemnize marriages between natives under article *one* of Law No. 3 of 1897 regulating the marriages of coloured persons.†

Title.

6. This Ordinance shall be cited for all purposes as the "Native Commissioners Jurisdiction Ordinance 1902."

* For jurisdiction as to resident justices of the peace see Ord. No. 19 of 1904, secs. 7-10 inclusive.

† For fees on such marriages see Ord. No. 39 of 1904, sec. 3.

No. 7 of 1902.]

[Promulgated 25th July, 1902.]

ORDINANCE

TO ENABLE THE DUTCH REFORMED CHURCH TO TRANSFER A CERTAIN PIECE OF LAND TO THE COLONIAL GOVERNMENT.

(Assented to 23rd July, 1902.)

WHEREAS by certain resolutions of the Executive Council of the late South African Republic a certain piece of ground measuring 200 feet by 300 feet situate in Von Brandis Square Johannesburg was vested in the Nederduitsche Hervormde of Gereformeerde Gemeente Johannesburg hereinafter called the said Church :

Preamble.

And whereas the said Church is now represented by three bodies or congregations owning the said property jointly :

And whereas the three kerkerads of the said three bodies or congregations have been duly authorized by their respective congregations to sell the said property and have appointed Sarel Johannes Liebenberg Christian Lodewijk de Jongh Jan van Dyl Jacobus Johannes Symington Adriaan Iman Willem Vissée Hendrik Jacobus Raubenheimer Johannes Nicolaas Theron Petrus Johannes Pentz and Johannes Daniel Olwage (hereinafter called the agents for sale) a commission to carry out the said sale :

And whereas by a deed of sale dated the thirteenth day of February 1902 between the said agents for sale and John Dale Lace acting on behalf of the Transvaal Government the said agents for sale sold the said piece of ground to the Transvaal Government :

And whereas although the said Church was empowered by Volksraad Resolution No. 175 dated the twenty-fourth May 1890 to sell any of its immovable property no provision has been made as to the person or persons by whom the transfer of such property may be effected on its behalf :

And whereas it is expedient to enable the said Church to carry out the said contract :

Be it enacted by the Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. The deed of sale of the thirteenth day of February 1902 shall be a valid and effectual contract of sale to the Transvaal Government of the rights and interest of the said Church in the piece of land aforesaid.

Contract of sale to be valid.

2. The power of attorney dated the sixth day of June 1902 signed by the nine agents mentioned in the said deed shall be sufficient authority to the Registrar of Mining Rights Johannesburg or to any other registering officer to transfer in the register kept in his department the said piece of land from the name of the said Church into that of Walter Edward Davidson in his capacity as Colonial Secretary of the Transvaal or the officer for the time being acting as such his successors or assigns.

Power of attorney to be sufficient authority to transfer.

3. Upon such transfer all the rights and interests of the said Church in the said piece of land shall vest henceforth in the Transvaal Government to be used for such purposes as to the said Government shall seem fit.

Land to vest in the Government.

No. 8 of 1902.]

[Promulgated 25th July, 1902.]

ORDINANCE

TO AMEND LAW NO. 16 OF 1895.

(Assented to 23rd July, 1902.)

BE IT ENACTED by the Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

Repeal.

Law No. 16 of 1895 except the last two paragraphs of article *two* and articles *twenty twenty-three* and *twenty-four* is hereby repealed.

No. 9 of 1902.]

[Promulgated 25th July, 1902.

ORDINANCE

TO AMEND LAW NO. 12 OF 1899.

(Assented to 23rd July, 1902.)

BE IT ENACTED by the Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. In article *one* of Law No. 12 of 1899 for the words “ registrar or landdrost clerk ” the words “ clerk of the court ” are hereby substituted. Amendment of article *one* of Law No. 12 of 1899.

2. In article *four* of the said law for the words “ registrars of the lower court or landdrost clerks ” the words “ clerks of the lower courts ” are hereby substituted. Amendment of article *four* of Law No. 12 of 1899.

3. In article *five* of the said law for the words “ articles *six* and *seven* ” the words “ article *nine* ” are hereby substituted. Amendment of article *five* of Law No. 12 of 1899.

4. Articles *six seven eight* and *eighteen* of the said law are hereby repealed. Repeal.

5. It shall be lawful for the members of the Supreme Court of the Transvaal or the majority of them to frame rules touching and concerning the fees to be lawfully demanded by and payable to any officers and attorneys in the circuit courts to be hereafter established. Framing of rules.

6. Upon the taking effect of any rule of court made under the provisions of section *thirty-one* of the Administration of Justice Proclamation 1902 or of the last preceding section fixing the fees* to be lawfully demanded by and payable to attorneys in respect of work done and services rendered in connection with any proceedings in the Supreme Court or in the Witwatersrand High Court or any Circuit Court articles *five* (as hereby amended) *nine fifteen* (except in so far as it refers to lower courts) *sixteen* and the first paragraph of article *seventeen* of the said Law No. 12 of 1899 shall be repealed. Repeal.

* Such tariff of fees was made and published under Govt. Notice No. 698, 1908 (*Gazette*, 24th July, 1908).

No. 10 of 1902.]

[Promulgated 29th July, 1902.]

*ORDINANCE

TO AMEND THE LAW RELATING TO JURIES.

(Assented to 24th July, 1902.)

BE IT ENACTED by the Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. Any law repugnant to or inconsistent with this Ordinance is hereby repealed.

QUALIFICATION OF JURORS.

2. Every white male person residing in this Colony between the ages of thirty and sixty years who shall be the owner or occupier of any immovable property of the value of not less than £500 according to the valuation roll of any divisional council or municipality or shall be in the receipt of salary or wages amounting to not less than £300 per annum and who shall not be disqualified or exempted by the terms of this Ordinance shall be qualified and liable to serve as a juror on any jury empanelled for any trial or enquiry within the jury district hereinafter defined in which such person shall reside.

For the purposes of this section the holder of a stand licence shall be deemed and taken to be the owner of immovable property.

3. When any such property shall be jointly owned or occupied by more persons than one each of such joint owners or occupiers if otherwise qualified or liable shall be qualified and liable to serve as a juror as aforesaid in case the value of such property when divided by the number of joint owners or occupiers shall give a sum not less than £500 for each such owner or occupier.

4. If in any jury district there shall not be for the whole or any portion thereof any valuation roll of a divisional council or municipality the officer appointed to make the lists of persons qualified and liable to serve as jurors shall in the absence of such valuation roll estimate the value of the properties owned or occupied in such jury district to the best of his judgment.

DISQUALIFICATION OF JURORS.

5. The following persons shall not be qualified to serve as jurors in any court or on any occasion nor shall their names be inserted in any jury list:—

(1) Any person who is not a subject of His Majesty the King.

(2) Any one who has been convicted whether in this Colony or elsewhere of treason murder rape theft fraud perjury forgery fraudulent insolvency or of any crime of equal degree with any of the aforesaid crimes unless he shall have received a free pardon.

* See Ord. No. 28 of 1903.

Laws repealed.

Qualification of jurors.

Joint owners or occupiers of property when qualified.

When no divisional council valuation roll, valuation to be made by person making the jury lists.

Disqualification of jurors.

- (3) Any person who cannot read and write.
 (4) Any person incapacitated by deafness blindness or other permanent infirmity for service on a jury.

EXEMPTIONS.

6. The following persons shall be exempt from serving as jurors and their names shall not be inserted in any jury list:—

Exemptions from serving on juries.

- (1) Members of the Executive and Legislative Councils.
- (2) Judges of the Supreme Court.
- (3) All ministers of religion.
- (4) All advocates and attorneys duly admitted and actually practising articled or managing clerks to attorneys and enrolled agents in the magistrates' courts.
- (5) All medical practitioners dentists and chemists and druggists legally qualified and actually practising.
- (6) All persons in the military or naval or Civil Service or enrolled in any volunteer corps or holding any paid office under His Majesty.
- (7) All deputy-sheriffs and sheriffs' officers.
- (8) All schoolmasters and school inspectors.
- (9) All persons continuously employed in the working of any railway or tramway.
- * (10) *Members of the council of any municipality or urban district board.*

JURY DISTRICTS.

†7. The area within a radius of six miles from the court house of the resident magistrate of Pretoria and every area within a radius of thirty-six miles from the court house of the resident magistrate of every other town where a Circuit Court is to be held and within the district in which such town is situated shall be deemed to be a "jury district".

Jury districts defined.

The "jury district" for the Witwatersrand District shall be the area within the jurisdiction of the Witwatersrand High Court and the list of jurors for such district shall be framed in the manner set forth in the Schedule to this Ordinance.

8. If within a radius of thirty-six miles mentioned in the last preceding section there shall not be found in any such jury district fifty-four men qualified and liable to serve as jurors such radius shall be extended to forty-eight miles and such extended area shall be a jury district until the said number shall at any subsequent taking of a jury list be found within thirty six miles.

Jury districts to be extended in case not fifty-four qualified persons.

Where the number of persons qualified to be jurors within the aforesaid radius of thirty-six miles is unnecessarily large it shall be lawful for the Governor by Proclamation to reduce the radius to any lesser distance.

JURY LISTS.

9. As soon as possible after the taking effect of this Ordinance or after the issue of a Proclamation declaring that a Circuit Court will be held in any town as the case may be and thereafter on or before the first day of January 1904 and every succeeding year so long as a Circuit Court shall continue to be held the

Magistrates shall annually require lists to be framed of persons qualified to serve as jurors.

* Sub-sec. 10 added by Ord. No. 39 of 1903, sec. 1.

† See, however, Ord. No. 69 of 1903, secs. 1 and 2.

resident magistrate of every district which includes any such "jury district" as aforesaid shall by written order require the persons who may be assigned by the Governor for such duty to prepare in alphabetical order a true list or return of all men residing within the limits mentioned in such order qualified and liable to serve as jurors; provided that the first lists framed under this Ordinance shall be the jury lists for the period ending the thirty-first December 1903.

Persons appointed to frame list.

10. Each person so assigned shall after the receipt of such order without delay make out such list or return as aforesaid giving the name and surname written at full length and the place of abode title calling or business of every person residing within the limits mentioned in such order qualified and liable to serve as a juror in such form as may be prescribed or required and shall deliver such list or return to the resident magistrate within one month from the date of his receiving such order as aforesaid.

Copies of previous year's list to be supplied each year.

11. In the year 1904 and every year thereafter the persons required to make out the lists of persons qualified and liable to serve as jurors shall respectively be supplied with copies of the lists made up for the previous year from which they shall strike out the names of persons who have since died removed or become disqualified or exempted by reason of age or other cause and shall add the names of persons not on such lists who are qualified and liable to serve.

Questions which may be put by persons making lists.

12. For the purpose of preparing such lists the persons engaged in their preparation may put such questions as they think proper relating to the said lists and to the name surname place of abode calling business occupation qualification or age of any man residing in any jury district.

Access to valuation roll of divisional council or municipality.

13. Every such person preparing such lists as aforesaid shall for the purpose of framing his return have free access to the valuation and voters' rolls of any divisional council or municipality and may make copies or extracts from such rolls.

Duty of magistrate on receiving lists.

14. The resident magistrate receiving such lists or returns as aforesaid shall cause to be prepared and made out a true list of the persons qualified and liable to serve as jurors within the "jury district" of which his court house is the centre.

Copy of list and notice to be affixed on door of court house.

15. A copy of such list shall be affixed on or near the principal door of the court house with a notice stating that a court will be held on a day to be stated not being less than fourteen days after the day on which such notice is posted to revise such list. Such notice shall also be published once at least in some newspaper circulating in the town where the court is to be held.

If no jury list for the year jury list of previous year to be used.

16. If at any time it shall happen that no jury list shall have been made for the current year for any jury district the jury list for the preceding year shall be deemed to be the proper jury list and used as such.

COURT OF REVISION OF JURY LISTS.

17. On the day and at the place appointed in the notice aforesaid the resident magistrate shall hold a court for revising the jury lists. Court of revision of jury lists.

18. The said court may be adjourned from time to time and all persons whose duty it is to make out such lists as aforesaid shall produce the lists prepared or made out by them as in this Ordinance directed and shall answer on oath such questions as may be put to them by the said court. Lists to be produced at court.

19. If the name of any person not qualified and liable to serve as aforesaid is inserted in any such list the said court if satisfied upon the oath of any person objecting or by other proof or upon the knowledge of the said court that he is not qualified and liable to serve as a juror shall strike his name out of such list. Court may strike out names on list

The court may insert the name of any person duly qualified and liable to serve who has been omitted from such list.

20. The said court may correct any errors or supply any omissions which shall appear to have been committed or made in respect of the name place of abode calling or otherwise of any one included in such list. Court may correct errors in lists.

21. When any such list shall be revised and completed the resident magistrate holding the said court shall certify the allowance thereof by the said court and transmit the same to the sheriff of the Colony. After lists revised transmitted to sheriff.

JURORS' BOOKS.

22. The sheriff receiving such lists from the resident magistrates shall cause the same respectively to be fairly and truly copied in a book to be called "The Jurors' Book of the district of....." (inserting the district) and shall prefix to every name its proper number beginning the numbers from the first name and continuing them in regular arithmetical series to the *last name. Sheriff to record lists in Jurors' Book.

SUMMONING JURORS.

23. Ten days at the least before the holding of a session for the trial of criminal cases in the Supreme Court Witwatersrand High Court or in any Circuit Court the sheriff or his lawful deputy shall summon twenty-seven qualified jurors taken from the jurors' book of the jury district wherein such courts shall respectively be held to serve on juries in the said courts. Sheriff to summon juries for Criminal Sessions.

24. The sheriff or his deputy shall summon or cause to be summoned each of such jurors by leaving with the person to be summoned or in case he shall be absent from his usual place of abode by leaving with some adult white person in occupation thereof a notice under the hand of the sheriff or his deputy requiring such juror's attendance in such court and at a place and on a day and hour to be therein stated. Mode of summoning juries.

25. The officer summoning such jurors shall make a return under his hand to the registrars of the said courts respectively of the manner of serving every such summons; or shall attend before the court and verify the same by oath. Return of services made to registrar.

* As in *Gazette*; in Ord. 1902 given as "last-named".

DRAWING NAMES OF JURORS FOR SERVICE.

Mode of drawing names of jurors to be summoned and directions to be observed.

26. In drawing names of jurors to be summoned for service the sheriff or his deputy shall observe the following directions :—

(1) He shall place in a box cards of equal size having written or printed thereon the numbers corresponding to the numbers opposite to the names of jurors on the jurors' list except those referred to in sub-section (6) of this section.

(2) He shall after shaking the box to distribute the cards therein draw out of the box singly as many cards as are equal to the number of jurors required to be summoned.

(3) After the cards are drawn he shall refer to the corresponding numbers in the jurors' book and if it be found that the names of two or more persons nearly related or connected or residing upon the same property or engaged or employed in the same house of business are both or all drawn he shall lay aside the cards corresponding to the names of all but one of such persons separately and draw out others and shall so proceed until the requisite number of jurors be obtained.

(4) If before or after the issue or service of notices requiring the persons drawn to attend as jurors he shall discover that any person whose name has been so drawn is dead absent or unable from sickness or any infirmity or other sufficient cause to attend he shall draw other cards to make up the deficiency and summon the jurors whose numbers have been drawn; provided such last-mentioned jurors shall have the requisite number of days' notice.

(5) He shall make out and return a list of the names of the persons so drawn and summoned to the registrar of the court in which the jurors are to serve.

(6) The cards bearing the numbers corresponding to the names of persons who have served as jurors at successive Criminal Sessions or Circuit Courts shall be kept separate until all the cards bearing the numbers corresponding to the names of persons who have not been drawn for service or being drawn have not served are drawn out of the jurors' box.

(7) When all the cards have been drawn out of the jurors' box the cards bearing the numbers corresponding to the names of persons who have performed their rota of service as jurors shall be returned to the jurors' box to be again drawn from and returned in like manner.

Sheriff to give notice of drawing which is to be done publicly under certain conditions.

27. When such drawing of names of jurors as aforesaid shall be made by a deputy-sheriff the following provisions shall apply :—

(1) The deputy-sheriff shall by notice posted on or near the principal door of the court room of the resident magistrate appoint a day not less than four days after the date of posting thereof on which he will attend in the court room aforesaid at some hour to be stated between the hours of 9 a.m. and noon for drawing the names of jurors for service.

(2) Such drawing shall take place publicly in the presence of the resident magistrate or any assistant magistrate or any clerk to the resident magistrate or any justice of the peace.

(3) As each card is drawn the deputy-sheriff shall refer to the corresponding number in the jurors' book and read aloud the name designated by such number and shall make a list of the names so drawn.

(4) Such list shall be signed by the deputy-sheriff and by the resident magistrate assistant magistrate magistrate's clerk or justice of the peace in whose presence such list is made.

(5) Such list shall be preserved by the deputy-sheriff until one month after the sitting of the court to which it has relation and if the sheriff of the Colony shall not during such month require it to be forwarded to him the said list may then be destroyed.

MISCELLANEOUS PROVISIONS.

28. If any person called as a juror shall refuse or be unwilling to be sworn the court may permit such person to make his solemn affirmation which affirmation shall be of the same force and effect as if such person had taken an oath in the customary form.

Court may allow affirmation to be made.

29. If any person having been duly summoned to attend before any court to serve as a juror for the trial of cases shall not attend pursuant to such summons or being thrice called shall not answer to his name or after his appearance shall wilfully absent himself during the sittings of the court or after any adjournment thereof before the jury shall be discharged from attendance the court shall impose such fine upon every person so making default as it shall think meet. Any person who shall be called or peremptorily summoned to attend in obedience to an order made or writ issued to supply a deficiency of jurors shall for any default or refusal as aforesaid be liable to such fine as the court shall think meet.

Penalty for not obeying summons to serve as juror.

30. If any person shall claim exemption from serving as a juror by means of any certificate or affidavit which he shall know to be false or which shall contain any false statement of fact he shall be liable to a penalty not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Penalty for false claim of exemption.

31. If any deputy-sheriff or sheriff's officer shall directly or indirectly take or receive any money or reward or promise of money or other reward to excuse any person from serving or being summoned to serve as a juror he shall be liable to such penalty not exceeding one hundred pounds as the court enquiring into the offence in a summary way shall see fit to impose.

Penalty for illegally excusing of juror by sheriff.

32. If any person assigned to the performance of any duty under this Ordinance shall be guilty of any of the acts or omissions in this section mentioned he shall be liable to a penalty not exceeding ten pounds.

Penalty for various acts.

(1) Refusing or neglecting (unless prevented by sickness the proof of which shall lie on the accused) to make out any list required to be made by him under this Ordinance.

(2) Wilfully omitting from such list the name of any person whose name ought to be inserted therein.

(3) Wilfully inserting in such list the name of any person who ought to be omitted.

(4) Neglecting or refusing to answer upon oath such questions as may be put to him by the revising court touching his list or the making thereof or refusing to be sworn.

Penalty for removing or defacing jury list posted on door of court.

33. Any person who shall remove or deface any list of jurors or notice posted at or near the door of the court house referred to in the *fifteenth* section of this Ordinance shall be liable to a penalty not exceeding five pounds.

Penalty for refusing to answer questions allowed by section *twelve*.

34. Any person who shall refuse to answer or shall falsely answer any question lawfully put by any person for the purposes mentioned in section *twelve* of this Ordinance shall be liable on conviction to a penalty not exceeding two pounds.

Judge may remit fines.

35. The judge presiding at any Criminal Sessions or Circuit Court may at any time during the sittings remit any fine or penalty imposed upon a juror for any default.

If fine or penalty not paid registrar shall issue writ.

36. If any fine or penalty imposed by the court shall not be paid or remitted before the close of the sittings then a writ shall be issued by the registrar of the court for the recovery of such fine or penalty as if the order imposing the same were a judgment of the court.

Payment of jurors.

37. Every person summoned under the provisions of this Ordinance to attend before any court to serve as a juror for the trial of criminal cases and attending in obedience to such summons shall be entitled to receive remuneration according to the following scale :—

(a) When he resides within a radius of five miles of the court to which he is summoned he shall be allowed ten shillings for every day or fraction of a day he is required to attend the sitting of the court ;

(b) when he resides beyond five miles of the court to which he is summoned he shall be allowed ten shillings for every day or fraction of a day he is required to attend the sitting of the court ; and in addition thereto four shillings for every six miles or portion thereof actually travelled by him by the usual route in proceeding to and to be travelled in returning from the court to which he is summoned ;

(c) the amount payable under the last preceding sub-section is to be calculated on the total distance travelled in going and returning and not upon the separate journeys to and fro. Travelling allowance can only be paid for one journey each way in respect of the same sittings.

Payments defrayed out of revenue.

38. All payments under the provisions of the preceding section shall be defrayed from the public revenue of the Colony.

Title.

39. This Ordinance may be cited for all purposes as the "Jury Ordinance 1902."

*SCHEDULE.**

Jurors List for period ending.	To consist of persons qualified to be jurors resident within.
31st December, 1903	The limits of the Municipality of Johannesburg.
31st December, 1904	The area formerly within the jurisdiction of the Mining Commissioner at Krugersdorp.
31st December, 1905	The area formerly within the jurisdiction of the Mining Commissioner at Boksburg.
31st December, 1906	The limits of the Municipality of Johannesburg. And so on in rotation.

* But see now Ord. No. 69 of 1903.

No. 11 of 1902.]

[Promulgated 29th July, 1902.]

ORDINANCE

(ARREAR LICENCE MONEYS ON CLAIMS AND STANDS).

(Assented to 24th July, 1902.)

WHEREAS by a judgment of the Supreme Court of this Colony claim-holders were held not to be exempt from the payment of licence moneys due on their claims during the period of the war by reason of not having had beneficial occupation thereof :

And whereas it is desirable to make provision in respect of such licence moneys both on claims and stands :

Be it enacted by the Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

Definition of terms.

1. (1) The following expressions in inverted commas shall have the meaning placed opposite to them :—

“period of the war” shall mean the period between the eleventh October 1899 and the thirty-first May 1902 inclusive ;

“Treasurer” shall mean the Colonial Treasurer ;

“claim” and “stand” shall mean respectively a claim and stand falling under the provisions of Law No. 15 of 1898 ;

“owner’s share of licence moneys on any claim or stand” shall mean the share of the licence moneys on any claim or stand to which the owner of the land on which such claim or stand is situated is entitled as against the Government under the provisions of Law No. 15 of 1898 ;

“Government’s share of licence moneys on any claim or stand” shall mean the share of the licence moneys on any claim or stand to which the Government is entitled after deducting the owner’s share as above defined.

(2) For the purpose of this Ordinance

(a) a person shall be deemed and taken to have had beneficial occupation of a stand if he has had the occupation thereof by himself or any member of his family or if he has derived any profit from the occupation thereof by some other person ;

(b) a person shall be deemed to have had beneficial occupation of any claim from the date after the eleventh October 1899 when he commenced to do mining or prospecting work thereon within the meaning of those terms as defined by article *three* of Law No. 15 of 1898 ;

(c) any person holding more claims than one situated in one block shall be deemed to have had beneficial occupation of the whole block if he has had beneficial occupation of any one claim in such block.

PART I.

2. The provisions of Part I of this Ordinance shall apply only to claims and stands situated on Crown land or Government ground. Application of Part I.

3. The holder of any claim or stand shall be and is hereby discharged from the payment of licence moneys due thereon for any portion of the period of the war during which he had not the beneficial occupation thereof. When holder of claim or stand is discharged from payment of licence moneys thereon.

*4. The holder of any claim or stand who has paid licence moneys in respect thereof for any portion of the period of the war during which he had not the beneficial occupation thereof shall be entitled to have such payment refunded to him by the Treasurer on his proving (on oath if required) to the satisfaction of the Commissioner of Mines that he had not such beneficial occupation as aforesaid. When holder of claim or stand may obtain refund of licence moneys already paid.

5. The registered holder of any claim or stand applying for the renewal or transfer of the licence thereto or for the registration of any mortgage thereon and claiming to be exempt under section *three* of this Ordinance from the payment of licence moneys which may have accrued in respect of such claim or stand during any portion of the period of the war shall on making such application lodge with the said registering officer a statement on oath setting forth the period if any during which he had the beneficial occupation of such claim or stand and such statement shall for the purposes of this section be binding on the registering officer provided always that it shall be competent for the said officer in case he find that the said statement is false and that the applicant had beneficial occupation for some portion of the period of the war not mentioned in the said statement to recover by action in some competent court the licence moneys on such claim or stand due and in arrear for such portion as aforesaid. Application for renewal or transfer of licence to claim or stand or for registration of mortgage thereon.

6. The provisions of the *eighty-fifth ninety-fourth one hundred and fourth and one hundred and fifth* articles of Law No. 15 of 1898 shall apply in respect of any licence moneys due and in arrear on any claim or stand prior to the eleventh October 1899 or due and in arrear for any portion of the period of the war during which the holder of such claims or stand was in the beneficial occupation thereof or which have become due since the thirty-first May 1902. Certain sections of Law No. 15 of 1898 to apply.

PART II.

7. The provisions of Part II of this Ordinance shall apply only to claims and stands situate on proclaimed private ground and to stands in proclaimed stand townships on proclaimed private ground. Application of Part II.

8. (1) The holder of any claim or stand shall be and is hereby discharged from the payment of the Government's share of the licence moneys due and in arrear thereon for any portion of the period of the war during which such holder had not the beneficial occupation thereof. When holder of claim or stand discharged from payment of Government's share of licence moneys thereon.

* See Ord. No. 18 of 1902, sec. 1.

(2) It shall not be the duty of the Government to collect or recover from the holder of such claim or stand the owner's share of the licence moneys due and in arrear thereon for the portion of the period mentioned in the last preceding subsection; but it shall be competent for the said owner to recover such share in manner hereinafter set forth.

Refund of licence moneys to owners who have paid.

*9. The holder of any claim or stand who has paid licence moneys in respect thereof for any portion of the period of the war during which he had not the beneficial occupation thereof shall be entitled on similar proof to that required under section four to a refund from the Treasurer of so much of such payment as represents the Government's share in such licence moneys.

How owner may recover his share of licence moneys.

10. (1) Notwithstanding anything to the contrary contained in Law No. 15 of 1898† it shall be competent for the owner of land on which any claim or stand is situated to claim by action in any competent court from the person who is the registered holder of such claim or stand at the date such action is commenced the owner's share in the licence money due and in arrear on such claim or stand for any portion of the period of the war during which such claim or stand was not beneficially occupied; and it shall be competent for the defendant in such action to avail himself of any defence thereto which he or any previous holder of such claim or stand would be entitled to under this Ordinance or any other law.

(2) No such action as aforesaid shall be commenced before the expiration of twelve months or after the expiration of two years reckoned from the taking effect of this Ordinance.

(3) The amount of licence moneys on such claim or stand as aforesaid to which the said owner may in law be entitled shall for a period not exceeding two years reckoned from the taking effect of this Ordinance unless sooner satisfied be a charge on the said claim or stand and shall rank next in priority to any existing special mortgage thereon.

Non-payment of owner's share of licence money not to prevent renewal of licence or registration of mortgage.

11. The provisions of section five of this Ordinance shall apply *mutatis mutandis* to any application for a renewal or transfer of a licence to any claim or stand falling under Part II of this Ordinance or to the registration of any mortgage bond thereon; and the non-payment of the owner's share in the licence moneys due and in arrear on such claim or stand for any portion of the period of the war during which the holder of such claim or stand had not the beneficial occupation thereof shall not prevent the renewal or transfer of such licence as aforesaid or the registration of any mortgage on such claim or stand.

Provisions of section six to apply to Part II. Provisions of this Ordinance to apply to any right held under Law No. 15 of 1898. Title.

12. The provisions of section six shall apply *mutatis mutandis* as if the same were repeated in Part II of this Ordinance.

13. The provisions of this Ordinance in respect of the payment of licence money due and in arrear on any claim shall apply to any right held under Law No. 15 of 1898 in connection with such claim on which licence money is payable under the said law.

14. This Ordinance may be cited for all purposes as the "Arrear Licence Moneys on Claims and Stands Ordinance 1902."

* See Ord. No. 18 of 1902, sec. 1. † Repealed by Act No. 35 of 1908.

No. 14 of 1902.]

[Promulgated 15th August, 1902.

*ORDINANCE

TO FURTHER AMEND THE STAMP DUTIES AMENDMENT
PROCLAMATION 1902.

(Assented to 7th August, 1902.)

BE IT ENACTED by the Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

*1. Except where express provision to the contrary is contained in the Stamp Duties Amendment Proclamation 1902 (hereinafter referred to as the said Proclamation) any instrument required to be stamped on its execution which has not been so stamped may be tendered at the office of any receiver of revenue within twenty-one days next after the date of its execution with an adhesive stamp denoting the stamp duty chargeable upon such instrument affixed thereon in accordance with the said Proclamation. The said receiver of revenue shall thereupon deface such adhesive stamp by writing his name upon or across such stamp and impressing his office stamp thereon together with the true date of his so doing and such instrument shall from and after such defacement as aforesaid be deemed and taken to be and to have been duly stamped and to be of the same force and effect in all respects as if it had been duly stamped when executed.

Receiver of Revenue to deface adhesive stamps on documents not stamped on execution but subsequently stamped.

2. Sub-section (a) of section *eighteen* of the said Proclamation is amended by substituting "twenty-one" for the word "ten" in the said sub-section.

Amendment of section *eighteen* of Stamp Duties Amendment Proclamation 1902.

3. Sub-section (2) of section *twenty-eight* of the said Proclamation is hereby amended by omitting all the words therein after the word "stamp". The said sub-section shall be read and construed as if the said words had never appeared therein.

Amendment of section *twenty-eight* of the Stamp Duties Amendment Proclamation.

4. The Schedule to the said Proclamation shall be and is hereby amended in the following respects:—

Amendment of Schedule to Stamp Duties Amendment Proclamation 1902.

(a) By omitting the item "copy of any instrument passed before a notary public 2s. 6d.";

(b) by omitting the item "Every notarial attestation of any instrument etc." and substituting the following:—

† "*Notarial instrument or duplicate or triplicate original thereof not being in itself chargeable with stamp duty; or grosse or copy of such notarial instrument; or notarial attestation of any instrument or of any grosse duplicate or copy thereof—2s. 6d.*"

(c) *Amending paragraph (2) under the head of "Power of Attorney" which paragraph is repealed by Ordinance No. 40, 1904, section six (2).*

5. This Ordinance may be cited for all purposes as the "Stamp Duty Further Amendment Ordinance 1902."

* Cf. Ord. No. 40 of 1904, secs. 2 and 4.

† Words in italics substituted by Ord. No. 40 of 1904, sec. 7.

No. 16 of 1902.]

[Promulgated 15th August, 1902.]

ORDINANCE

PROVIDING FOR THE CONTINUED INCORPORATION OF THE NATIONAL BANK OF SOUTH AFRICA, LIMITED.

(Assented to 7th August, 1902.)

WHEREAS on the fifth day of August 1890 the Government of the late South African Republic granted a concession to form and establish a bank to be called "De Nationale Bank der Zuid Afrikaansche Republiek Beperkt" hereafter referred to as the said bank and to carry on banking business as also to establish a mint in the said Republic which concession was ratified and confirmed by the Volksraad of the said Republic by resolutions dated ninth August 1890 articles 1229 and 1231 under and by virtue of which resolutions the said bank was incorporated and the liability of its shareholders limited :

And whereas certain alterations in and modifications of the said concession were approved of and ratified and confirmed by the First Volksraad of the late South African Republic by resolution dated fifteenth June 1899 :

*And whereas by an agreement between the Governor and the said bank certain privileges enjoyed by the bank under the said concession have been abandoned :

And whereas it is necessary to make provision for the carrying on of its business by the bank notwithstanding the said agreement :

And whereas the name of the bank has been changed into "The National Bank of South Africa, Limited".

Be it hereby enacted by the Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. The incorporation of the said bank and the limitation of the liability of the shareholders thereof under Volksraad Resolution No. 1231 of the ninth August 1890 shall not be affected by the aforesaid agreement or by any modification of the said concession approved of by the First Volksraad or by any change in the name of the said bank.

2. The shares of the said bank issued and to be issued in terms of Volksraad Resolution of the fifteenth June 1899 shall be deemed and taken to be fully paid up.

3. The said bank shall be and is hereby empowered to amend its articles of association as may be found necessary and to register the same as well as any such modifications of the said concession as are referred to in section *one* of this Ordinance in the office of the Registrar of Deeds at Pretoria.

* Cf. Ord. No. 33 of 1903.

Incorporation of bank and liability of shareholders not to be affected by modification of said concession. Shares issued in terms of resolution of 1899 deemed to be fully paid up. Amendment of articles of association.

No. 17 of 1902.]

[Promulgated 23rd August, 1902.]

*ORDINANCE

TO PROVIDE AGAINST THE SPREAD OF DISEASES AMONG STOCK.
(Assented to 22nd August, 1902.)

WHEREAS the disease among animals known as Rhodesian red-water (hereinafter described as the said disease) has broken out in the Transvaal :

And whereas it is desirable to prevent the spread of the said disease :

Be it enacted by the Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. After the taking effect of this Ordinance every owner or occupier of a farm on which the said disease has broken out and every person owning or being in charge of cattle suffering from the said disease shall forthwith report the same to the nearest resident magistrate or assistant resident magistrate *or field cornet or resident justice of the peace*† or to the nearest police station and on failure to do so shall be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months or to both such fine and such imprisonment.

Owner of farm to report on breaking out of disease on his farm.

2. Such report as aforesaid if not made direct to the resident magistrate *assistant resident magistrate or field cornet or resident justice of the peace*† shall be forthwith transmitted to him and he shall on being satisfied that the said disease exists on any farm or place forthwith inform the *Minister of Agriculture*§ who shall by notice in the *Gazette* declare such farm or place to be an infected area.

Resident magistrate on receiving report to inform Colonial Secretary.

||3. The following provisions shall until altered or repealed by regulations made under this Ordinance be of force in any infected area :—

Provisions in force in infected areas.

(1) No cattle shall be moved from such area.

(2) No other stock shall be moved from such area unless previously disinfected in manner prescribed by regulations made under this Ordinance.

(3) All stock in such area shall be herded as far as practicable from any public road.

(4) No person shall leave such area without having complied with such reasonable precautions for preventing the spread of the said disease as may be prescribed by regulations under this Ordinance.

* Cf. Ord. No. 38 of 1904 (East Coast Fever) ; Act No. 17, 1907 ; Act No. 34, 1907, sec. 6 (5) (Duties of Field Cornets) ; Act No. 10, 1908.

† Words in italics inserted by Act No. 10 of 1908, sec. 1.

‡ Words in italics inserted by Act No. 10 of 1908, sec. 2.

§ Words in italics substituted by Act No. 10 of 1908, sec. 2.

|| See Act No. 10 of 1908, sec. 3, as to penalties for second or subsequent contraventions.

(5) The carcasses of all animals dying from the effects of the said disease shall forthwith be either buried at a depth of not less than four feet below the surface of the ground or burnt at the expense of the owner.

Penalties.

Any person contravening any of the aforesaid provisions shall be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months.

Governor may prohibit importation of stock.

4. It shall be lawful for the Governor by notice in the *Gazette* to prohibit for such time as to him may seem necessary the importation into this Colony of all stock from any place outside the Transvaal where the said disease prevails.

Governor may make regulations.

*||5. It shall be lawful for the Governor from time to time to make regulations for all or any of the following purposes and to provide penalties for the breach thereof:—

(1) The prevention of the introduction and spread of the said disease in this Colony.

(2) The isolation inoculation removal and slaughter of stock suffering or suspected to be suffering from the said disease.

(3) The burial or destruction of carcasses.

Provisions of Ordinance may be applied by Proclamation to any other disease among stock.

†6. It shall be lawful for the Governor by Proclamation to make the provisions of this Ordinance apply to any other disease among stock mentioned in such Proclamation.

Definition of stock.

7. In this Ordinance the term “stock” shall include cattle sheep goats horses mules donkeys and pigs or any other animal liable to a disease to which this Ordinance or any amendment thereof has been so applied.†

Title.

8. This Ordinance may be cited for all purposes as the Diseases of Stock Ordinance 1902.

* See Govt. Notices Nos. 599, 1903 (*Gazette* 19/6/03, Regulations prevention Rhodesian Redwater); 600, 1903 (*Gazette* 19/6/03, Transport-riding in infected areas); 77, 1904 (*Gazette* 22/1/04, Blood inoculation Rhodesian Redwater forbidden); 1034, 1904 (*Gazette* 23/9/04, Regulations *re* licenses to move cattle); 877, 1908 (*Gazette* 4/9/08, Importation tuberculous cattle from Cape Colony forbidden); 579, 1909 (*Gazette* 28/5/09, Importation meat from Natal forbidden); 619, 1909 (*Gazette* 11/6/09); 1461, 1909 (*Gazette* 31/12/09); 330, 1910 (*Gazette* 8/4/10, Diseases of Stock Regulations); 908, 1909 (*Gazette* 13/8/09); 380, 1910 (*Gazette* 15/4/10, Ports of entry for stock); 164, 1910 (*Gazette* 18/2/10); 292, 1910 (*Gazette* 24/3/10, Dipping of sheep); 463, 1910 (*Gazette* 29/4/10, Regulations *re* importation cattle, etc., from Transkei and adjoining territories).

|| See Act No. 10 of 1908, sec. 3, as to penalties for second or subsequent contraventions.

† Provisions of this Ord. applied by Pr. (Admn.) No. 38, 1909, to the following diseases: (*a*) Rinderpest; (*b*) pleuro-pneumonia (or lung-sickness); (*c*) redwater and East Coast fever (or Rhodesian redwater); (*d*) tuberculosis; (*e*) foot and mouth disease; (*f*) anthrax (or splenic fever); (*g*) glanders and farcy; (*h*) scab in sheep and goats; (*i*) swine fever; (*j*) swine erysipelas; (*k*) mange (scabies) in horses and mules; (*l*) ulcerative lymphangitis; (*m*) sheep pox; (*n*) contagious abortion; (*o*) epizootic lymphangitis; (*p*) animal trypanosomiasis (other than *T. theileri*); (*q*) surra; (*r*) rabies; and (*s*) swine plague.

‡ Words in italics added by Act No. 10 of 1908, sec. 8.

No. 18 of 1902.]

[Promulgated 23rd August, 1902.

ORDINANCE

(LICENSE MONEYS ON CLAIMS AND STANDS).

(Assented to 22nd August, 1902.)

WHEREAS it appears that certain licence moneys on claims and stands were paid in respect of the period of the war to the Government of the late South African Republic :

Be it enacted by the Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. The right conferred by sections *four* and *nine* of Ordinance No. 11 of 1902 on holders of claims and stands to a refund from the Treasurer of licence moneys paid in respect of any portion of the period of the war during which they had not beneficial occupation of such claims or stands shall not extend to any such licence moneys which may have been paid to the Government of the late South African Republic.

Sections *four*
and *nine* of
Ordinance
No. 11 of 1902
explained.

2. This Ordinance shall be read and construed as part of Ordinance No. 11, of 1902.

No. 19 of 1902.]

[Promulgated 29th August, 1902.]

*ORDINANCE

TO MAINTAIN THE OWNERSHIP OF THE CROWN IN CERTAIN
PROPERTY.

(Assented to 22nd August, 1902.)

WHEREAS under the Conditions of Surrender of the burgher forces of the two late Republics dated the thirty-first May 1902 provision is made for rendering assistance to ex-burghers by advances of food seed stock implements and other material :

And whereas it is desirable to protect such advances from being alienated or from being seized in execution under any judgment which may be obtained against the person or persons to whom such advances are made :

Be it enacted by the Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. All stock implements and other materials delivered to any person in the Transvaal for the purpose of assisting him under the tenth clause of the Conditions of Surrender dated the thirty-first May 1902 shall remain the property of the Government until paid for or until a written discharge shall have been given to such person from any liability to the Government in respect of the cost of such property as aforesaid.

Stock, etc.,
delivered to
any person
under tenth
clause of
Conditions of
Surrender
vested in
Government
until paid
for.

* See Ord. No. 4 of 1906 ; Act No. 6 of 1908.

No. 23 of 1902.]

[Promulgated 8th October, 1902.]

ORDINANCE

FOR THE MANAGEMENT OF THE CUSTOMS OF THE TRANSVAAL.

(Assented to 4th October, 1902.)

WHEREAS it is expedient that the laws in force for the management of the Customs of this Colony should be amended :

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. In this Ordinance the following words and expressions are used in the following senses :—

(a) Goods include all wares articles merchandise animals matter or things imported or brought into or exported from this Colony.

(b) Importer includes his agent.

(c) Exporter includes his agent.

(d) Director of Customs means the principal officer of Customs for the time being.

2. No goods shall be imported into this Colony without due entry as hereinafter prescribed and the payment or securing of such duties as may be imposed by law and any goods imported contrary to this shall be forfeited ; provided that such forfeiture shall not be taken to affect or remove any other fine or punishment which shall be incurred under or by virtue of this or any other law in force at the time of such importation.

3. No goods of foreign manufacture nor any packages of such goods bearing any names brands or marks purporting to be the names brands or marks of manufacturers resident in the United Kingdom or any British possession and no base or counterfeit coin or stamps and no indecent or obscene prints paintings photographs books cards or lithographs or engravings or any other indecent or obscene articles nor any goods the importation of which may be prohibited by or in virtue of any law shall be imported or brought into this Colony ; and if any of the goods herein enumerated shall be imported or brought in contrary to the provisions hereof the same shall be forfeited.

4. When and as soon as notice shall have been given in the Legislative Council of the introduction in such Council of a Draft Ordinance whereby it shall be proposed to increase the rate of Customs duty payable upon the importation of any goods it shall be lawful for the officers of the Customs Department acting under instructions to that effect from the Governor to refuse to permit any of the goods mentioned in such Draft Ordinance to be entered for consumption unless and until the person proposing to pay duty upon the same shall together with a surety to be approved of by the proper officer of Customs enter into a bond conditioned for the payment of such increased duty as may be imposed by any Ordinance passed within three months of the introduction of such Draft Ordinance.

Power to enforce such bonds.

5. On the passing of any Ordinance as aforesaid whereby the rate of Customs duty previously payable upon any goods mentioned in any such Draft Ordinance shall be increased it shall be lawful for the Director of Customs to call upon the person who entered for consumption the said goods to pay the difference between the duty paid by him and the increased duty payable under the said Ordinance; and in case he shall refuse or neglect so to do the said bond shall by the said Director be put in suit for the recovery of such difference.

Effect of alteration of duty upon purchase price of goods purchased before the alteration.

6. In the event of any increase decrease or repeal of Customs duty chargeable upon any article after the making of any contract or agreement for the sale or delivery of such article duty paid in the absence of special provision in the contract it shall be lawful for the seller in case such increase shall accrue before the clearance or delivery of such article at such increased duty having paid such increased duty to add so much money to the contract price as will be equivalent to such increase of duty and he shall be entitled to be paid and to sue for and recover the same; and it shall be lawful for the purchaser under any such contract or agreement in case such decrease or repeal shall take effect before the clearance or delivery at such decreased duty or free of duty as the case may be to deduct so much money from the contract price as will be equivalent to such decrease of duty and he shall not be liable to pay or be sued for in respect of such deduction.

Form of declaration for *ad valorem* goods and procedure in case of doubt.

7. In all cases where the duties imposed upon the importation of goods into this Colony are charged not according to the weight tale gauge or measure but according to the value thereof such value shall be ascertained by the declaration of the importer of such goods in the manner and the form following that is to say:—

** I the undersigned..... do hereby declare that the above is a true description and complete return of all the goods contained in the above-mentioned packages and that the values given of the same are the true current value of same as defined by law including the cost of packing and packages at the place where the goods were purchased for importation into the Transvaal.*
The above declaration signed the..... day of.....190... in the presence of.....Collector.

Which declaration shall be written on the bill of entry of such goods and shall be subscribed with the hand of the importer thereof in the presence of the officer of Customs and the said values shall be the sum whereon duty shall be levied; provided that if upon view and examination of such goods by the officer of Customs it shall appear to him that the said goods are not valued according to the current value thereof at the place where the same were purchased then and in such case such officer may if he deem it fitting to do so require the importer to declare on oath

* Words in italics substituted by Ord. No. 4 of 1906, sec. 10.

before him to the truth of the aforesaid declaration according to the best of the belief of such importer and to adduce any documentary evidence he may possess in support thereof; and provided further if it shall appear to the officer of Customs whether such oath as aforesaid shall have been required or not that such goods have been declared at a value below the current value thereof at the place where the same were purchased the goods shall in such case be examined by two competent persons one to be nominated and appointed by the Director of Customs and the other by the importer and such two persons shall before entering into the inquiry appoint an umpire and shall then declare on oath before the officer of Customs what is to the best of their knowledge and belief the current value of such goods at the place where the same were purchased and in case such persons shall not agree then the declaration of such value on oath as aforesaid of the umpire shall be final.

8. If any importer shall fail within three days from his being required to do so by the officer of Customs to make an appointment as provided for by the last preceding section or if no declaration shall be made by the persons appointed or by the umpire selected by them within three days from their appointment or selection then in any such case the declaration of the person appointed as aforesaid by the Director of Customs shall be final and the duties shall be charged and paid upon the value as ascertained and declared in conformity therewith.

Provision in case of failure to carry out procedure in foregoing section.

9. Should the value so ascertained and declared under any of the provisions hereinbefore contained for arbitration exceed by 15 per cent. and not by 30 per cent. the value originally declared by the importer there shall be payable on such goods double the amount of duty otherwise chargeable thereon; and should the value so ascertained and declared under as aforesaid exceed by 30 per cent. and not by 60 per cent. the value originally declared by the importer then there shall be payable on such goods four times the amount of duty otherwise chargeable thereon; and should the value so ascertained and declared as aforesaid exceed by 60 per cent. or upwards the value originally declared by the importer then such goods shall be forfeited.

Penalties for under-valuation.

10. If the importer of such goods shall refuse to pay the duties imposed thereon under the preceding section it shall be lawful for the proper officer of Customs and he is hereby required to take and secure the same and to cause the same to be publicly sold within the space of one month after such refusal at such time and place as such officer shall by four or more days' public notice appoint for that purpose which goods shall be sold for cash to the highest bidder and the proceeds shall be applied in the first place in payment of the said duty together with the charges which shall have been occasioned by the said sale and all costs and charges of arbitration and the overplus if any shall be paid to such importer or owner or any other persons authorized to receive the same.

Goods to be sold if additional duties not paid.

11. *Repealed by Ordinance No. 4, 1906, section eleven, and new provisions made.*

Form or label Post Office parcels.

Duties to be charged according to Colonial weights and measures.

Power of Governor to declare ports of entry roads, route, etc.

Goods not duly entered to be conveyed to King's Warehouse and sold after three months.

Importer to produce all invoices, documents, etc., and to handle goods at his own expense. Persons carrying on business to keep proper record of their transactions for Customs inspection.

12. All duties shall unless otherwise specially provided be charged paid and received on and according to the weights and measures by law established in this Colony; and in all cases when such duties are imposed according to any specific quantity or any specific value the same shall be deemed to apply proportionally to any greater or less quantity or value.

*13. It shall be lawful for the Governor by Proclamation in the *Gazette* from time to time to declare certain places as ports for this Colony to or through which only goods may and must be imported or through which they may and must be exported and he may also declare the roads or routes in this Colony over which such goods must be conveyed to their destination. If any goods liable to Customs duties shall be imported or exported to through or from any other than the declared ports or in any other manner than is provided in this Ordinance or by any regulation made by virtue of this Ordinance or conveyed over any other than the declared roads or routes then such goods shall be forfeited to the Government together with the vehicles and animals made use of in importing or exporting such goods.

†14. Every importer of goods shall immediately upon their arrival make due entry of the same, at the Custom House and in default of such entry the officer of Customs may convey such goods to the King's Warehouse for security of the duties thereon and may charge and demand and receive warehouse rent at such rate as may be fixed for or during such times as such goods shall remain in such warehouse; provided always that it shall be lawful for the Director of Customs with the sanction of the Governor to fix the rates or amount of rent which shall be payable for any goods secured in any of the King's Warehouses aforesaid; and should any importer neglect within three months to duly enter his goods it shall be lawful for the Director of Customs to cause the same to be sold by public auction after not less than one month's public notice and the nett proceeds shall be applied to the payment first of duties and warehouse rent and then of freight and charges and the overplus (if any) shall be paid to the importer owner or to any other person authorized to receive the same; provided however that in the case of goods of a perishable nature and goods of which it is considered that the proceeds would not be sufficient to cover duties and charges the Director of Customs may authorize their immediate or an earlier sale.

15. The importer shall on demand produce to the officer of Customs all invoices and other documents relating to the goods and shall at his own risk and expense unload and reload remove to and from the warehouse and open unpack repack and close up such of the packages as the officer of Customs may require to examine.

16. Persons carrying on any business in this Colony shall keep *†within this Colony* proper books of their transactions and they must be prepared to produce the bills of lading invoices and

* See Prs. (Admn.) Nos. 8 of 1902, No. 5 of 1903, No. 10 of 1903, No. 40 of 1905, No. 99 of 1906, and No. 111 of 1908.

† For rent of warehouses, see Notices No. 44 of 1903 (*Gazette*, 30/1/03) and No. 76 of 1903 (*Gazette*, 27/2/03).

‡ Words in italics inserted by Ord. No. 5 of 1904, sec. 1 (a).

other documents containing all particulars regarding imported and sold goods so that the same may at all times be open for inspection by the Director of Customs or his deputies and that the same may be attached by him if necessary. . In default thereof the person or persons concerned shall be liable to punishment as provided in this Ordinance.

17. Any person offering goods for sale or removing the same or having goods entered in his books or mentioned in documents as set forth in the last preceding section shall be obliged at the request of the Director of Customs or his deputies to produce proof as to the origin of the goods and as to the place where the import dues thereon have been paid as also the date of such payment the marks and numbers of the cases packages bales etc. which must correspond with the documents produced in proof of the payment of the import dues *and any person failing refusing or neglecting to produce proof of any of the matters within this section referred to shall be liable to the penalties provided by section fifty-two of this Ordinance.*

Persons offering goods for sale, etc., to produce proof as to origin of goods and payment of duty.

18. Every officer of Customs is hereby invested for the protection of the revenue with the several powers following :

Powers of Customs Officers.

(1) He shall have free access to every store shop or other structure for the reception of goods and every vehicle conveying or suspected or supposed to be conveying goods with the power to seal mark or otherwise secure any packages there found.

(2) He may board search and freely remain on any train in the pursuance of his duties.

(3) If any such store shop or other structure or if any box or package be locked and the keys thereof shall not be produced when demanded such officer may open any such place box or package in the best manner in his power.

(4) He shall have the right to examine rummage or search every part of any such place or vehicle as is above mentioned in sub-sections (1) and (2) for any purpose thereby authorized and to take an account of all dutiable goods found therein.

(5) He may search any person should he have good reason to suppose that such person has any dutiable or prohibited goods secreted about his person or in his or her possession ; provided that before any person shall be searched by any officer as aforesaid such person may require such officer to take him or her before the principal officer of Customs of the port or station who shall if he sees no reasonable cause for search discharge such person but if otherwise direct such person to be searched ; provided that a female shall not be searched by any other than a female.

(6) Any officer required to take such person before such principal officer of Customs shall do so with all reasonable dispatch ; and any officer guilty of any contravention of this regulation shall forfeit the sum of twenty pounds.

19. Any person who shall by force or violence assault resist oppose molest hinder or obstruct any officer of Customs in the exercise of his office or any person acting in his aid shall be liable

Punishment for assaulting Customs Officers.

†Words in italics added by Ord. No. 5 of 1904, sec. 1 (b).

on conviction to a fine not exceeding one hundred pounds sterling or to be imprisoned with or without hard labour for any period not exceeding one year or to both such fine and imprisonment.

Uncustomed goods to be forfeited.

* 20. *Should any goods for which due entry has not been made or in respect of which there has been a contravention of any regulation framed under the provisions of section seven of the Customs Union and Tariff Amendment Ordinance 1903 be found in any store shop structure vehicle or place or in the possession of any person they shall be liable to forfeiture and the importer or person in whose possession or on whose premises or under whose control such goods are found shall be liable to the penalties prescribed by section fifty-two of this Ordinance.*

Power of Governor to grant rebate on goods removed from this Colony.

†21. Whenever any goods imported or warehoused on importation into this Colony shall be removed to any Colony State or Territory outside this Colony it shall be lawful for the Governor to grant a rebate of the Customs duties payable on the said goods; provided however that no such rebate shall be granted until after notice thereof shall have been given in the *Gazette*; and provided further that such goods are removed only in accordance with such regulations as may from time to time be prescribed by the Governor by notice in the *Gazette*.

Appointment and licensing of bonded warehouses.

22. It shall be lawful for the Director of Customs by notice in the *Gazette* to appoint and license from time to time warehouses for the warehousing and securing of goods therein for the purposes of any law relating to the Customs and also in such notice to declare what sort of goods may be so warehoused therein and also by like notice to revoke or alter any such appointment licence or declaration.

The amount payable for such licence shall be at the rate of *twenty-five*† pounds per annum; provided that no licence shall be issued for a period of not less than three months and that all such licences shall expire on the last day of March June September or December.

Such licences may be transferred from one warehouse to another in the possession of the person to whom issued but shall not be transferable from one person to another.

Warehousing of goods and removal to other warehousing stations.

23. It shall be lawful for the importer of any such goods on due entry to warehouse the same in the warehouses so appointed without any payment of any duty on the first entry thereof subject nevertheless to the rules regulations restrictions and conditions hereinafter contained; provided always that any goods warehoused at any warehousing station may be delivered under the authority of the proper officer of Customs upon a sufferance granted in that behalf without payment of duty except for any deficiency thereof for the purpose of removal to another warehousing station in this Colony under bond to the satisfaction of such officer for the due arrival and re-warehousing of such goods at such other station.

* This section substituted by Ord. No. 5 of 1904, sec. 1 (c).

† For rebate and regulations see Govt. Notice No. 514 of 1902 (*Gazette*, 8/10/02).

‡ Words in italics substituted by Ord. No. 5 of 1904, sec. 1 (d).

24. All goods so warehoused shall be stowed in such parts or divisions of the warehouse and in such manner as the Director of Customs shall direct and the warehouse shall be locked and secured in such manner and shall be opened and visited only at such times and in the presence of such officers and under such rules and regulations as the Director of Customs shall direct.

Goods to be stowed warehoused locked and secured in accordance with Customs Regulations.

25. Upon the entry of any goods to be warehoused the importer of such goods instead of paying the duties due thereon shall give bond with sufficient surety to be approved of by the Director of Customs in double the duties payable on such goods with condition for the safe depositing of such goods in the warehouse mentioned in such entry and for the payment of all the duties due upon such goods or for the exportation thereof according to the first account taken of such goods upon the landing of the same and with further condition that the whole of such goods shall be so cleared from such warehouse and the duties upon any deficiency in the quantity according to such first account shall be paid within two years from the date of the first entry thereof; and with the further condition that no part thereof shall be taken out of such warehouse until cleared from thence upon due entry and payment of the duty or upon due entry for exportation; and with the further condition that if at the end of one year from the date of such bond the quantity of goods of any particular denomination in respect of which the same shall have been given still remaining in the warehouse shall be so reduced that the duties payable on the balance shall not exceed ten pounds sterling then such balance shall be cleared from the warehouse and the duties thereon forthwith paid; and if after such bond shall have been given the goods or any part thereof shall be sold or disposed of so that the original bonder shall be no longer interested in or have any control over the same it shall be lawful for the Director of Customs to admit fresh security to be given by bond of the new proprietor or other person having control over such goods with his sufficient surety and to cancel the bond given by the original bonder of such goods or to exonerate him to the extent of the fresh security so given.

Bond to be given for security of duty etc.

26. It shall be lawful for the owner or occupier of any bonded warehouse appointed under authority of this Ordinance to give general security by bond with sufficient surety to the satisfaction of the Director of Customs for the payment of the full duties of importation on all such goods as shall at any time be warehoused therein or for the due exportation thereof upon the like terms and conditions with regard to times of payment and clearance of balances as those contained in the bond in the last foregoing section mentioned and where such general securities shall have been given in respect of any bonded warehouse it shall not be necessary for the importer to give bond as by the last foregoing section required in respect of the particular goods imported and entered to be warehoused therein.

General bond may be given.

27. If any goods which have been entered to be warehoused shall not be duly carried into and deposited in the warehouse or shall afterwards be taken out of the warehouse without due entry

Goods entered to be warehoused and improperly dealt with to be forfeited.

and clearance or having been entered and cleared for exportation shall not be duly carried and exported or shall afterwards be re-imported except with the permission of the proper officer of the Customs such goods shall be forfeited.

Proper record to be kept of warehoused goods and duties to be paid on quantities as warehoused with exception of unmanufactured tobacco ale beer spirits and wine in the wood.

28. Upon the entry and landing of any goods to be warehoused the proper officer of Customs shall take a particular account of the same and shall if he see fit mark the contents on each package and shall enter the same in a book to be kept for that purpose ; and no goods which shall have been so warehoused shall be taken or delivered from the warehouse except upon due entry and under the care of the proper officers for exportation or upon due entry and payment of duty for home use ; and whenever the whole of the goods warehoused under any entry shall be cleared from the warehouse for home use or whenever further time shall be granted for any such goods to remain warehoused an account shall be made out of the quantity upon which the duties have been paid if any and of the quantity exported if any and of the quantity (to be then ascertained) of the goods still remaining in the warehouse as the case may be deducting from the whole the quantity contained in any whole packages if any which may have been abandoned for duties ; and if upon such account there shall in either case appear to be any deficiency of the original quantity the duty payable upon the amount of such deficiency shall then be paid ; except as to the following goods namely ale beer spirits and wine in the wood and unmanufactured tobacco the duties whereon when cleared from the warehouse for home use shall be charged upon the quantity of such goods at the time of actual delivery thereof unless there is reasonable ground to suppose that any portion of the deficiency or difference between the quantity as above mentioned ascertained on landing and first examination of such last-mentioned goods and that ascertained at the time of actual delivery has been caused by illegal or improper means in which case the proper officer of Customs shall make such allowance only for loss as he may consider justly to have arisen from natural evaporation or other legitimate cause ; in no instance however are such allowances to exceed in the case of ale beer spirits and wine in the wood such as may be specified* by the Governor by notice in the *Gazette* ; provided that nothing in this section contained shall extend or apply to any goods entered and cleared from the warehouse for exportation.

Director of Customs may allow re-packing etc. and goods may be destroyed or abandoned.

29. It shall be lawful for the Director of Customs under such regulations as he shall see fit to permit the owner or other person having control over the goods so warehoused to sort separate and pack and repack any such goods and to make such lawful alterations therein or arrangements and assortments thereof as may be necessary for the preservation of such goods or in order to the sale or exportation either in original packages or such other packages as the Director of Customs may authorize or in order to other legal disposal of the same and also to permit any parts of such goods so separated to be destroyed but without prejudice to the claim for duty upon the remaining quantity of

* See Govt. Notice No. 516 of 1902 (*Gazette*, 8th October, 1902, p. 1428) as to scale of wastage allowance.

such goods ; provided always that no duty shall be payable upon any goods so destroyed as aforesaid and that it shall be lawful for any person to abandon any goods to the officers of Customs for the duties which would otherwise have been chargeable thereon.

30. Any person contravening any of the rules and regulations made by the Director of Customs under authority of this Ordinance or of any other law relating to the Customs shall forfeit the sum of ten pounds for each offence.

Penalty for contravening Director of Customs' rules and regulations.

31. All goods warehoused or re-warehoused shall be duly cleared either for exportation or for home consumption according to the terms of the conditions of the bonds whereunder the same shall have been warehoused or re-warehoused ; and if any such goods be not so cleared it shall be lawful for the Director of Customs to cause the same to be sold and the net produce shall be applied first to the payment of the duties next to warehouse rent and other charges and the overplus if any shall be paid to the owner or any other person duly authorized to receive the same ; provided always that it shall be lawful for the Director of Customs to grant further time for any such goods to remain warehoused if he shall see fit to do so.

Goods to be cleared with-in terms of bond failing which they may be sold by Customs.

32. No duty shall be charged in respect of any deficiency in goods entered and cleared from the warehouse for exportation unless the officers of Customs have reasonable ground to suppose the deficiency or any part thereof has arisen from illegal abstraction. If any goods duly entered for delivery from the warehouse for removal to another station in this Colony or for exportation shall be destroyed by unavoidable accident in the course of delivery from the warehouse the Director of Customs shall remit the duties due thereon. If goods entered to be warehoused or entered to be delivered from the warehouse shall be destroyed by fire or other unavoidable accident either in landing or in being received into the warehouse or while in the warehouse the Director of Customs shall return the duties if any paid thereon.

Duty not chargeable in respect of goods destroyed by accident.

33. All goods whatsoever which may be deposited in any warehouse or place of security under lawful authority without payment of the duty upon the first importation thereof or which may be imported shall upon being entered for home consumption be subject and liable to such and the like duties as may at the time of passing such entry be due and payable upon the like sort of goods under any law for the time being in force relating to the Customs.

Warehoused goods liable to duty in force at time of clearance.

34. Every person exporting any goods from this Colony shall deliver to the Director or other proper officer of Customs a bill of entry showing full details and particulars of the articles and their destination.

Exporter to deliver bill of entry.

*35. Every person employed on any duty or service relating to the Customs by order or with the concurrence of the Governor or Director of Customs whether previously or subsequently expressed shall be deemed to be the officer of Customs for that

Who shall be deemed officer of Customs.

* South African Constabulary were made officers of customs, see Notice No. 682 of 1907 (*Gazette* of 27/9/07); Govt. veterinary surgeons and stock inspectors are officers of customs, see Notice No. 695 of 1907 (*Gazette* 4/10/07).

duty or service and every act matter or thing required by any law at any time in force to be done or performed by to or with any particular officer nominated in such law for such purpose being done or performed by to or with any person appointed by the Governor or the Director of Customs to act for or in behalf of such particular officer the same shall be deemed to be done or performed by to or with such particular officer.

Examinations and inquiries on oath by Customs.

36. Upon examinations and inquiries made by the Director of Customs within this Colony or by the officer of Customs in charge of any port for ascertaining the truth of facts relative to the Customs or the conduct of officers or persons employed therein any person examined before such officer as a witness may be required to deliver his testimony on oath or in any other form authorized by law which oath or form shall be administered by or taken before the Director or such other officer of Customs as shall examine any such witness and who is hereby authorized to administer such oath or form; and if any person shall be convicted of giving false evidence on such examination every such person so convicted as aforesaid shall be deemed guilty of perjury and shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury.

Officer before whom oath may be taken.

37. In all other cases wherever proof on oath or in any other form authorized by law shall be required by any law relating to the Customs the same may be made before the Director of Customs or the principal officer of Customs of the port where such proofs shall be required to be made or before the persons acting for them respectively who are hereby authorized and empowered to administer the same.

Forfeiture of carriages cattle etc. made use of in carrying goods liable to forfeiture.

38. All carriages or other vehicles and cattle made use of in the removal of any goods liable to forfeiture under any act relating to the Customs shall be forfeited except it shall be shown that the same were made use of in removal of goods liable to forfeiture without the consent or knowledge of the owner thereof his agent or other person in possession or charge thereof with the consent of such owner and every person who shall knowingly by himself or by his agent in that behalf assist or be otherwise concerned in the unloading or removal or in harbouring of such goods or into whose hands the same shall knowingly come shall forfeit treble the duty paid value thereof or the penalty of one hundred pounds sterling at the election of the Director of Customs and the statement in any proceeding instituted for the recovery of such penalty that the officer proceeding has elected to sue for the sum mentioned in the information shall be deemed sufficient proof of such election without any other or further evidence of such fact.

Condemnation of seized goods unless claimed within one calendar month.

39. All carriages or other vehicles goods or other things which shall have been or shall hereafter be seized as forfeited in this Colony under any law relating to the Customs shall be deemed and taken to be condemned and may be dealt with in the manner hereinafter directed unless the person from whom such carriage or other vehicle goods or other things shall have been seized or the owner of them or some person authorized by him shall within one calendar month from the day

of seizing the same give notice in writing to the person or persons seizing the same or to the Director of Customs or other principal officer of Customs of the port where the same shall have been seized that he claims the carriage or other vehicle goods or other things or intends to claim them and in default of giving such notice as aforesaid no action suit or proceeding shall be capable of being brought or instituted against any officer of Customs grounded merely upon the seizure of any of the carriages or other vehicles goods or other things so seized as aforesaid.

40. All things which shall be seized as being liable to forfeiture under any law relating to the Customs shall be taken forthwith to and delivered into custody of the Director of Customs or the principal officer of Customs at the Custom-house next to the place where the same were seized who shall secure the same and after condemnation thereof the Director of Customs shall cause the same to be advertised and sold by public auction to the highest bidder; provided always that it shall be lawful for the Governor to direct that in lieu of such sale any of such things shall be destroyed or shall be reserved for the public service; provided also that the produce of such sale shall be exempt from the payment of auction dues thereon.

Disposal of seized and condemned goods.

*41. (1) *All penalties and forfeitures heretofore or hereinafter incurred under any law relating to the Customs may be recovered either by civil action or criminal prosecution in any court of competent jurisdiction.*

Recovery of penalties and forfeitures.

(2) *Where any such penalty or forfeiture has been adjudged to be paid upon a criminal prosecution the sum so adjudged may be recovered in manner prescribed by section two hundred and forty-nine of the Criminal Procedure Code 1903.*

42. Every suit for the recovery of any penalty or forfeiture under any law relating to the Customs shall be commenced in the name of the Director of Customs or of His Majesty's Attorney-General for this Colony.

Suits for recovering penalties etc. to be commenced in name of Director of Customs or Attorney-General.

43. If any goods shall be stopped or seized for non-payment of duties or any other cause of forfeiture and any dispute shall arise whether the duties have been paid for the same or the same have been lawfully imported or lawfully laden the proof of the affirmative of these facts as well as the onus of proof of the origin of the goods shall be on the person owning or claiming such goods.

Onus of proof of payment of duty and origin of goods to lie on importer.

44. The importer shall be responsible for any contravention of this Ordinance committed by the person or persons acting in his place or on his behalf whilst at the same time such person or persons shall in like manner be responsible.

Liability of importer for acts of agent.

45. No writ shall be sued out against nor a copy of any process served upon any officer of the Customs for anything done by him in pursuance of any law relating to the Customs until

One month's notice of action to be given to Customs Officer.

* This section substituted by Ord. No. 5 of 1904, sec. 1 (e).

one calendar month after notice in writing shall have been delivered to him or left at his usual place of abode by the attorney or agent of the party who intends to sue out such writ or process in which notice shall be clearly and explicitly contained the cause of the action and the name and the place of abode of the person who is to bring such action and the name and the place of abode of the attorney or agent and no evidence of the cause of such action shall be produced except of such cause as shall be contained in such notice and no verdict shall be given for the plaintiff unless he shall prove on the trial that such notice was given and in default of such proof the defendant shall receive in such action a verdict and costs.

Limit to period within which action may be commenced against Customs Officer.

46. Every such action shall be commenced within three months after the accruing of the cause thereof and if the plaintiff shall discontinue the action or if judgment shall be given against him the defendant shall receive as costs full indemnity for all expenses incurred by him in or about the cause of action and have such remedy for the same as any defendant can have in other cases where costs are given by law.

Cost of suit where there is reasonable cause of seizure.

47. In case any action or suit instituted by the Director of Customs or by the Attorney-General shall be brought to trial on account of any seizure made under any law relating to the Customs and judgment shall be given for the defendant and the court before which such cause shall have been tried shall find and adjudge that there was reasonable cause of seizure the defendant shall not be entitled to any costs of suit; and in case any action or suit shall be brought by any person against any officer of Customs for or on account of any such seizure by such officer made wherein judgment shall be given for the plaintiff such plaintiff in case the court by and before which such cause shall have been tried shall find and adjudge that there was reasonable cause of seizure shall recover only the things seized or the value thereof without costs of suit.

Disposal of penalties and forfeitures.

48. All penalties and forfeitures recovered under any law relating to the Customs shall be paid into the hands of the Director of Customs and shall be divided paid and applied as follows that is to say: after deducting the charges of prosecution if any and of the costs of sale from the proceeds the balance shall be paid into the Colonial Treasury; provided that it shall be lawful for the Director of Customs at his discretion to grant thereout such sum or sums of money not exceeding one-third of the said balance to such officer or officers or other persons as may have rendered efficient service either by information or active assistance in leading to the recovery of such penalty or forfeiture; provided further that if it shall be made to appear to the Governor in any particular case that one-third part will be insufficient for the adequate acknowledgment of such services as above mentioned such third part may be increased to one-half of such net produce instead of one-third.

Power of Governor to restore seizures and to mitigate or remit penalties.

49. It shall and may be lawful for the Governor to direct any carriage or other vehicle goods or commodities whatever seized under any law relating to the Customs to be delivered to the owner thereof whether condemnation shall have taken place

or not and also to mitigate or remit any penalty or fine incurred under any such law or to release from confinement any person committed under any such law as aforesaid on such terms and conditions as to him shall appear to be proper; provided always that no person shall be entitled to the benefit of any order for such delivery mitigation remission or release unless such terms and conditions are fully and effectually complied with; and provided that if the owner of the goods seized as aforesaid shall accept the terms and conditions prescribed by the Governor he shall not have or maintain any action for recompense or damage on account of such seizure or detention and the person making such seizure shall not proceed in any manner for condemnation.

50. If any person shall in this Colony counterfeit or falsify or knowingly or wilfully use when counterfeited or falsified any entry warrant or other document *to be used in connection with the entry of any goods or** for the unloading lading entering reporting of any carriage or other vehicle or for the landing or removing of any goods baggage or article whatever or shall by any false statement procure any writing or document to be made for any such purpose or shall falsely make any oath or affirmation required by any law relating to the Customs or shall forge or counterfeit a certificate of the said oath or affirmation or shall publish such certificate knowing the same to be so forged and counterfeited every person so offending shall for every such offence in addition to any penalty to which he may otherwise be liable forfeit the sum of three hundred pounds sterling and such penalty shall and may be prosecuted sued for and recovered in like manner and by such ways and means as any penalty may be prosecuted sued for and recovered under the provisions and directions of this Ordinance.

Penalty for falsification of documents false oath etc.

†51. The Governor may from time to time by notice published in the *Gazette* make and alter regulations providing

Power of Governor to make regulations.

(a) for the importation entry removal or conveyance of all goods imported into this Colony;

(b) for all the necessary forms bills and documents for the convenient and effective carrying out of the Customs laws and regulations;

(c) for the functions and duties of all officers employed in the administration of this Ordinance and generally for the due and proper administration of this Ordinance.

52. Any person who shall contravene any section of this Ordinance for the contravention of which no special punishment has been fixed or any regulation or stipulation of any notice or regulation made and published in terms of this Ordinance shall be liable to a fine not exceeding three hundred pounds sterling and in default of payment to imprisonment with or without hard labour for any period not exceeding twelve months

General fines and punishment.

* Words in italics inserted by Ord. No. 5 of 1904, sec. 1 (f).

† For regulations see Govt. Notices Nos. 513 of 1902 (*Gazette*, 8/10/02); 654 of 1906 (*Gazette*, 29/6/06), and 44 of 1908 (*Gazette*, 10/1/08), and Notices Nos. 172 of 1902 (*Gazette*, 14/3/02) and 180 of 1902 (*Gazette*, 10/10/02).

or to both such fine and such imprisonment; and all goods imported and removed in contravention of any such regulation and all vehicles and animals made use of in the importation or in the removal of such goods shall become forfeited to the Government.

*53. Law No. 4 of 1894 from and including section *five* to the end thereof and all other laws repugnant to or inconsistent with this Ordinance are hereby repealed.

54. This Ordinance may be cited as the "Customs Management Ordinance 1902" and shall come into effect after the expiration of seven days from the date of publication† thereof.

Repeal of
laws repug-
nant to etc.

Title.

* The remainder of Law No. 4 of 1894 (secs. 1 to 4) were repealed by Ord. No. 41 of 1903.

† Published in *Govt. Gazette* (Extra.) of 8th Oct., 1902.

No. 24 of 1902.]

[Promulgated 10th October, 1902.]

*ORDINANCE

TO DEFINE THE POWERS AND JURISDICTION OF THE
LIEUTENANT-GOVERNOR.

(Assented to 8th October, 1902.)

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. All authorities powers and jurisdictions whether conferred by statutory enactment or otherwise which have heretofore been exercised by the Governor of this Colony shall from and after the passing of this Ordinance and subject to the provisions of the Letters Patent dated the twenty-third day of September 1902 or any Letters Patent passed in substitution therefor be exercised by the Lieutenant-Governor.

Powers and jurisdiction of Lieutenant-Governor.

2. This Ordinance shall be cited as the "Lieutenant-Governor's Official Duties Ordinance 1902." Title.

* See Letters Patent, 1906, sec. LXI.

No. 26 of 1902.]

[Promulgated 10th October, 1902.]

ORDINANCE*LEGALIZING CERTAIN MARRIAGES SOLEMNIZED IN THIS COLONY.**

(Assented to 8th October, 1902.)

WHEREAS the Marriage Ordinance (Law No. 3 of 1871) requires a marriage to be solemnized either by a landdrost or by a minister of the gospel authorized by the Government to solemnize marriages on the production of a certificate from the landdrost that the provisions of the law have been complied with :

And whereas after the date of the annexation of the Transvaal to His Majesty's Dominions to wit the first day of September 1900 marriages were solemnized under the aforesaid law by persons who had been appointed as landdrosts before the said date by the Government of the late South African Republic and also by ministers of the gospel on certificates given by such landdrosts after the said date :

And whereas after the said date persons were appointed as landdrosts by the Government of the late South African Republic and by the commandant-general and assistant commandants-general of the burgher forces of the late South African Republic :

And whereas such persons appointed as landdrosts after the said date as aforesaid did under the aforesaid law solemnize marriages and did grant certificates on which marriages were solemnized by ministers of the gospel :

And whereas doubts have arisen whether the marriages solemnized by such landdrosts after the said date and by such ministers of the gospel on certificates given by such landdrosts after the said date are valid by reason of the fact that the persons appointed as landdrosts before the said date could not legally solemnize such marriages or grant such certificates as aforesaid after the said date and also by reason of the fact that the Government of the late South African Republic and the commandant-general and assistant commandants-general of the burgher forces of the said Republic could not legally after the said date appoint persons to act as such landdrosts :

And whereas the said marriages were bona fide contracted by the parties thereto and were bona fide solemnized :

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

* Cf. Ord. No. 29 of 1903, legalizing marriages of coloured persons under certain conditions ; Trans. Proc. No. 31 of 1902, legalizing marriages solemnized by military governors, district commissioners, and chaplains of forces, and ministers of religion authorized by late Government ; and Ord. No. 33 of 1905.

1. All marriages solemnized under Law No. 3 of 1871 after the date of the annexation of the Transvaal to His Majesty's Dominions to wit the first day of September 1900 by persons appointed as landdrosts by the Government of the late South African Republic or by the commandant-general or the assistant commandants-general of the burgher forces of the said Republic ; and all marriages solemnized by ministers of the gospel authorized to solemnize marriages on certificates given after the said date by persons appointed as landdrosts as aforesaid certifying that the provisions of the law had been complied with shall be as valid to all intents and purposes as if such persons had been at the date of such marriages or at the date when such certificates were given lawfully vested with all the powers and jurisdiction conferred on landdrosts by Law No. 3 of 1871.

Legalization
of certain
marriages.

2. This Ordinance may be cited for all purposes as the Title, "Legalization of Marriages Ordinance 1902."

No. 27 of 1902.]

[Promulgated 10th October, 1902.

ORDINANCE

TO ENABLE THE COUNCIL FOR THE MUNICIPALITY OF
JOHANNESBURG TO LIQUIDATE THE LIABILITIES OF THE LATE
STADSRAAD.

(Assented to 8th October, 1902.)

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with
the advice and consent of the Legislative Council thereof as
follows :—

Council or
municipality
may liquidate
liabilities of
late
Stadsraad.

*1. It shall be lawful for the Council for the municipality of
Johannesburg out of moneys raised on loan to liquidate all or any
of the liabilities of the late Stadsraad constituted under Law No.
9 of 1892† on such terms and conditions as the Lieutenant-
Governor may approve.

No right to
maintain any
claim against
Council.

2. Nothing contained in this Ordinance shall be taken to
entitle any person to whom the late Stadsraad may have been
indebted to maintain any claim in respect of such debt against the
said Council except under the provisions of section *one* of this
Ordinance.

Certain rates
and charges
due to
Stadsraad
vested in
Council.

3. All rates and charges not already included under Procla-
mation (Transvaal) No. 16 of 1901 due and unpaid to the late
Stadsraad or to the officer in charge of the municipal affairs of
Johannesburg appointed thereto by the military governor of
Johannesburg for the period between the thirty-first day of May
1900 and the fifteenth day of May 1901 shall be and are hereby
vested in the Council for the municipality of Johannesburg and
shall be deemed and taken to be due to the said Council.

Title.

4. This Ordinance may be cited for all purposes as the
“Stadsraad (Johannesburg) Liabilities Liquidation Ordinance
1902.”

* Cf. Ord. No. 9 of 1903, by which special borrowing powers to the extent
of £200,000 by means of bills are granted for the purpose of enabling the town
council to carry out this section.

† Clearly an error; should be Law No. 19 of 1892, or Law No. 9 of 1899.

No. 28 of 1902.]

[Promulgated 10th October, 1902.]

ORDINANCE

TO EXEMPT CERTAIN NATIVES FROM THE OPERATION OF THE PASS LAWS.

(Assented to 8th October, 1902.)

WHEREAS it is desirable to relieve from the operation of the Pass Law certain respectable and deserving natives to whom the said law applies but who are not entitled to letters of exemption under the terms of the Coloured Persons Exemption (or Relief) Proclamation 1901 :

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

*1. Any native as defined by Proclamation (Transvaal) No. 37 of 1901 who shall be employed under a contract of service as a skilled artisan mechanic tradesman or other skilled employé or who shall on his own behalf carry on some trade or business may upon producing satisfactory evidence thereof on application at the offices mentioned in the next succeeding section be granted a certificate of registration under this Ordinance which certificate shall exempt the holder from the operation of the existing law relating to passes.

Certificates of registration may be issued to certain natives.

2. Certificates of registration under this Ordinance shall be granted at any office where passes or passports are issued in the Transvaal.

Where certificates of registration shall be issued.

3. A certificate of registration shall be valid for twelve months and upon issue or renewal thereof there shall be paid by the person to whom it is issued the sum of one pound to be denoted by revenue stamps which shall be affixed to the certificate by the applicant and cancelled by the official issuing it.

Fees to be paid on issue.

If the holder of a certificate fails or neglects to renew the same within a period of twenty-one days from the date of its expiration he shall become subject to the provisions of Proclamation (Transvaal) No. 37 of 1901 and the regulations thereunder until he shall again have obtained such a certificate.

4. A certificate of registration shall not be transferable and any holder of a certificate transferring it to any other person and any person using a certificate to which he is not entitled shall be liable on conviction to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months or to both such fine and such imprisonment.

Certificate not transferable.

* For definition of "native" for purposes of Trans. Proc. No. 37 of 1901 see new Ord. No. 27 of 1903, sec. 2.

Loss of
certificate.

5. In the event of the loss of a certificate of registration application may be made for a duplicate which may be granted on payment of a fee of five shillings to be denoted by revenue stamps affixed to the duplicate by the applicant and cancelled by the official issuing it.

Form of ap-
plication for
certificate.

6. Every application for a certificate of registration shall be as nearly as possible in the form in the Schedule annexed to this Ordinance.

Title.

7. This Ordinance may be cited as the "Natives' Relief Ordinance 1902."

— — — — —
SCHEDULE.

FORM OF APPLICATION FOR CERTIFICATE OF REGISTRATION.

No.....

Name of applicant.....

Residing at.....

Working at.....

Age.....

Occupation.....

Name and description of :

Father.....

Mother.....

Married or single.....

References.....

(Town or District).....

(Date).....

Issued under Ordinance No. 28 of 1902.

No. 30 of 1902.]

[Promulgated 17th October, 1902.

*ORDINANCE

GIVING CERTAIN POWERS TO THE COMMISSION APPOINTED TO INQUIRE INTO THE JOHANNESBURG INSANITARY AREA IMPROVEMENT SCHEME.

(Assented to 17th October, 1902.)

WHEREAS it is desirable that the commission appointed under Government Notice No. 463 of 1902 should have powers conferred on it to compel the attendance of witnesses and the production of documents :

Be it enacted by the Lieutenant-Governor of this Colony with the advice and consent of the Legislative Council thereof as follows :—

1. The Commission appointed under Government Notice No. 463 of 1902 to inquire into and report on the Johannesburg Insanitary Area Improvement Scheme shall have for the purposes of its inquiry the powers of the Supreme Court to summon witnesses ; to call for the production of and grant inspection of books and documents ; and to examine witnesses on oath such oath to be administered by the chairman.

Powers of commission appointed under Government Notice No. 463 of 1902 to summon witnesses etc.

Summons for the attendance of witnesses or the production of documents may be in the form given in the Schedule to this Ordinance and shall be signed by the chairman or secretary to the commission and served in the same manner and by the same officer as if it were a summons issued by the resident magistrate of the district in which the witness resides.

2. All persons summoned to attend and give evidence before the said commission or to produce books and other documents at any of its sittings shall be bound to obey the summons served on them ; and any person refusing or omitting without sufficient cause to attend and give evidence or to produce books and documents in his possession or under his control mentioned or referred to in the summons served on him at any sitting of the said commission when summoned to do so shall be liable to a penalty not exceeding fifty pounds to be recovered in the court of resident magistrate for the district and in default of payment to imprisonment with or without hard labour for a period not exceeding three months ; provided always that every person summoned to give evidence or produce books and documents shall be entitled to all the privileges to which a witness summoned to give evidence or produce books or documents before the Supreme Court is entitled.

Persons summoned to give evidence and produce documents bound to obey summons.

3. Any witness who shall after being duly sworn wilfully give false evidence before the said commission concerning the subject matter of inquiry shall be guilty of perjury and shall be liable to be prosecuted and punished accordingly.

Penalty for false evidence.

* See Ord. No. 19 of 1903.

Penalty for refusing to answer questions or for wilfully insulting commission.

4. Every witness who shall attend before the said commission and shall refuse to answer or to answer fully and satisfactorily to the best of his knowledge and belief all questions put to him by or with the concurrence of the commission; and every person who shall at any sitting of the commission wilfully insult any commissioner or wilfully interrupt the proceedings at such sitting shall be liable to a penalty not exceeding fifty pounds to be recovered at the suit of the Public Prosecutor in the court of the resident magistrate for the district.

Provisions of this Ordinance may be applied to any commission appointed by Lieutenant-Governor.

5. The Lieutenant-Governor may by notice in the *Gazette* confer the powers jurisdiction and privileges under this Ordinance *mutatis mutandis* on any commission appointed by him to make any public inquiry.

Title.

6. This Ordinance may be cited as the "Commissions' Powers Ordinance 1902."

SCHEDULE.

SUMMONS TO WITNESSES.

To A.B. (*name of person summoned, and his calling and residence if known*).

You are hereby summoned to appear before the commission appointed by the Governor under Government Notice No. 463 of 1902 to inquire into and report on the Johannesburg Insanitary Area Improvement Scheme, at.....
 (*place*), upon the.....
 day of....., 19...., at..... o'clock, and to give evidence respecting such inquiry; (*if the person summoned is to produce any documents add*). And you are required to bring with you.....(*specify the books, plans, and documents required*.)

Given under the hand of the chairman or secretary of the commission this
 day of....., 19.....

R M 9 of 1902
No. 31 of 1902.]

[Promulgated 17th October, 1902.

ORDINANCE†

TO AMEND THE PRETORIA MUNICIPAL PROCLAMATION 1902.

(Assented to 17th October, 1902.)

WHEREAS it is desirable to amend the Pretoria Municipal Proclamation 1902 and to confer on the Council of the municipality for Pretoria power to regulate the issue of passes to natives within the said municipality and to charge a fee for such passes :

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. Section *six* of the Pretoria Municipal Proclamation 1902 shall be and is hereby amended by altering the expression “two-thirds” occurring therein into “one-half”.

Amendment of Proclamation Transvaal No. 7 of 1902 section *six*. Power to make regulations. Amendment of Tr. Pr. No. 7, 1902, sec. 37.

2. Repealed by Act No. 18, 1909, section one.

3. Repealed by Act No. 18, 1909, section one.

4. On publication of the regulations made by the Council under section *twenty-seven* sub-section (4) of the Pretoria Municipal Proclamation 1902 as amended by section *two* hereof the regulations for native passes issued by the military governor of Pretoria under Government Notices Nos. 41 and 82 of 1900 shall cease to have any force or effect whatsoever.

Supercession of notices as to native passes by military governor.

5. Section *thirty-six* of the said Proclamation shall be and is hereby amended by adding the following paragraph thereto viz. : “The provisions of this section shall not apply to goods imported from over-sea through the duly appointed agents of the Council”.

Amendment of section *thirty-six* as to contracts.

*6. On publication of regulations made by the Council under sub-sections (34) (3) and (18) of section *nineteen* nothing in Law No. 2 of 1882 Law No. 8 of 1899 Law No. 8 of 1888 Law No. 3 of 1891 contained shall apply to any pound or market established by the Council or to any dogs within the municipality.

General law as to pounds markets or dogs not to apply to the municipality.

7. This Ordinance may be cited as the “Pretoria Municipal Proclamation Amendment Ordinance 1902”.

Title.

† See Ord. No. 50 of 1904, Ord. No. I (Priv.) of 1906, Act No. 32 of 1907, Act No. 12 of 1910.

* Cf. Ord. No. 41 of 1904, sec. 30, excluding Law No. 13 of 1895 (Pawnbrokers Law) also from Pretoria Municipality.

No. 32 of 1902.]

[Promulgated 31st October, 1902.]

*ORDINANCE

TO AMEND LAW NO. 19 1898 (REGULATING THE MANNER IN WHICH WINES, SPIRITUOUS OR MALT LIQUORS MAY BE SOLD).

(Assented to 27th October, 1902.)

BE IT ENACTED by His Excellency the Lieutenant-Governor with the advice and consent of the Legislative Council as follows:—

Repeal of laws.

1. The laws mentioned in the First Schedule to this Ordinance shall be and the same are hereby repealed to the extent mentioned in the said Schedule except as to offences committed against or proceedings commenced or pending under any of such repealed laws and except as to subsisting licences which shall during the interval between the coming into operation of this Ordinance and the expiration of such licences respectively be deemed and judged of in respect of the sales and dealings which they shall be held to authorize and the liabilities which the holders thereof shall incur as if the said repealed laws still remained in force.

Exemptions.

2. (a) Nothing in this Ordinance shall apply

- (1) to any person selling any spirituous or distilled perfume or perfumery or medicated or methylated spirits to persons other than coloured persons ;
- (2) to any medical practitioner apothecary chemist or druggist who may administer or sell for purely medicinal purposes any bona fide medicine containing "intoxicating liquor" as hereinafter defined ;
- (3) to any sheriff messenger or other officer acting under the authority of any court judge or magistrate or to any officer of Customs in the exercise or discharge of his duties ;
- (4) to any auctioneer selling by auction liquor in quantities not less than such as are authorized to be sold under a wholesale licence belonging to a licensed dealer upon the licensed premises of such dealer ;
- †(5) to any person selling liquor in a refreshment-room attached to the legislature of this Colony if acting upon the permission of such legislature or any committee thereof and if selling such liquor in accordance with the regulations and conditions laid down by such legislature or committee thereof.

(b) Nothing in this Ordinance relating to the application for licences shall apply to any garrison or police canteen where liquor is supplied solely to members of such garrison or police force or to the sale of liquor by retail to passengers on railway trains

* See Ords. Nos. 17 and 68 of 1903 ; Ord. No. 4 of 1906, sec. 9 ; Ord. No. 8 of 1906 ; and Act No. 33 of 1909.

† Sub-sec. (5) added by Ord. No. 8 of 1906, sec. 2.

under the control of the Commissioner of Railways by persons authorized by him to sell on such conditions as the Lieutenant-Governor may approve of.

3. In this Ordinance if not inconsistent with the context : Definition of terms.
- *“intoxicating liquor” or “liquor” means any spirit wine ale beer porter cider perry hop beer Kaffir beer and any liquor containing more than 2 per cent. of alcohol and any other liquor which the Lieutenant-Governor may from time to time declare by Proclamation in the *Gazette* to be included in this definition ;
- “spirituous liquor” means intoxicating liquor manufactured by any process of distillation ;
- “methylated spirits” means spirits mixed with some substance in such manner and quantity as to the satisfaction of the Director of Customs to render the mixture unfit for use as a beverage ;
- “licence” means any licence for the sale of liquor granted under this Ordinance or any law hereafter to be in force relating to the sale of such liquor ;
- “new licence” means a licence applied for in respect of premises not licensed for the sale of intoxicating liquor at the date of the application therefor ;
- “licensing court” or “court” means the licensing court of the district wherein a licence is intended to take effect ;
- “district” means any area for which a court of resident magistrate has been established ;
- “local authority” shall include the Council of any municipality or any health board ;
- “voters” shall mean the persons entitled to vote at an election of members of a local authority.

LICENCES.

†4. The licences authorised to be granted under this Ordinance shall be issued by the receivers of revenue in the several districts of this Colony who shall in regard to the issue of such licences and any privileges allowed or granted to the holders thereof to be noted or endorsed upon any licence conform to the provisions of this Ordinance and any regulations to be made by the Lieutenant-Governor relating to the performance of their duties under this Ordinance. Issue of licences.

†5. For or in respect of licences granted or renewed or transfers or removals of licences or privileges allowed to the holders of licences under and in terms of this Ordinance there shall be payable and paid to the Public Treasury such sums of money as are prescribed in the Second Schedule hereto. Fees to be paid in respect of licences.

* The following have been declared intoxicating liquor within this section : Eau de Cologne by Pr. (Admn.) No. 80 of 1903 ; isityimiyana or skokian by Pr. (Admn.) No. 19 of 1906 ; ighali or khali by Pr. (Admn.) No. 60 of 1906 ; Perry Davis' Pain Killer by Pr. (Admn.) No. 15 of 1909.

† See however Act No. 9 of 1907, sec. 2, and Act No. 33 of 1909, sec. 7.

Description
of licences.

‡§6. Licences under this Ordinance may be granted of the several descriptions following that is to say :

- (1) wholesale liquor licences ;
- (2) hotel liquor licences ;
- (3) restaurant or café liquor licences ;
- (4) malt liquor licences ;
- (5) bottle liquor licences ;
- (6) general retail liquor licences ;
- (7) club liquor licences ;
- (8) railway station liquor licences ;
- (9) theatre liquor licences ;
- (10) temporary liquor licences ;
- (11) brewers liquor licences.

Definition of
different
kinds of
licences.
Wholesale
licences.

§7. In regard to licences granted under this Ordinance the following definitions and provisions shall apply :—

- (1) (a) A “wholesale liquor licence” shall authorize the holder to sell and deliver liquor in quantities of not less than two gallons if in cask ; or one case containing not less than twelve reputed quart or twenty-four reputed pint bottles to be delivered at a time. Such liquor shall not be consumed in or upon the licensed premises.
- (b) Such licence may be issued to an individual or to a company or partnership when two or more persons carry on business as a company or partnership in the same premises.
- (c) The holder of a wholesale liquor licence shall be obliged to keep proper books showing the following particulars of all sales of liquor by him that is to say
 - (1) the name and address of the purchaser ;
 - (2) the quantity description and price of the liquor sold.
- (d) The books mentioned in the last preceding sub-section shall at all reasonable times be opened to the inspection of any officer of the town police or constabulary not below the rank of inspector or captain ; and any holder of a licence refusing to allow such officer to inspect such books shall for each such offence be liable to a fine not exceeding fifty pounds.
- * (e) *No sale or delivery of liquor under the authority of a wholesale liquor licence shall take place except during such hours as may be fixed by the licensing court in respect of each such licence not being earlier than eight o'clock in the morning or later than eight o'clock at night.*
- (2) (a) An “hotel liquor licence” shall authorize the sale of liquor by retail to persons sleeping boarding or taking meals on the premises of the hotel to be consumed therein on every day between such hours as may be fixed by the licensing court in respect of each licence.

Hotel liquor
licence.

‡ See Ord. No. 17 of 1903, sec. 1, providing for canteen liquor licences, and Ord. No. 68 of 1903, sec. 1, providing for railway construction employees' liquor licences.

§ See however Act No. 9 of 1907, sec. 2.

|| As in *Gazette* ; in Ord., 1902, the word “paragraph” is given.

* Sub-sec. (e) added by Ord. No. 8 of 1906, sec. 3.

- (b) No such licence shall be granted unless it is proved to the satisfaction of the licensing court that the premises afford reasonable accommodation for visitors and are provided with proper sanitary arrangements.
- (c) In towns villages stand-townships and public diggings no hotel boarding or lodging house licence shall be granted in respect of premises where intoxicating liquor is sold without the consent of the *resident magistrate*† and such consent shall not be given unless such *resident magistrate*† be satisfied that the premises afford reasonable accommodation for visitors or boarders and that the business therein carried on is that of a bona fide hotel boarding or lodging house.
- (d) Nothing in this section contained shall prevent the granting or renewal of a general retail liquor licence as well as an hotel liquor licence to the keeper of an hotel.
- (3) A “restaurant” or “café liquor licence” shall authorize the sale of liquor by retail to persons taking meals in the restaurant or café in respect of which such licence has been granted to be drunk at such meals on any day during such hours as the licensing court may fix in respect of each licence not being earlier than ten o’clock in the morning or later than nine o’clock at night. Restaurant or
café liquor
licence.
- (4) A “malt liquor licence” shall authorize the sale of ale beer porter cider perry and hop beer only in quantities less than one reputed quart bottle to be consumed on the premises specified in the licence during such hours as may be fixed by the licensing court in respect of each licence not being earlier than eight o’clock in the morning nor later than nine o’clock at night on any day other than Sunday Christmas Day Good Friday and parliamentary municipal and divisional council election days before the hour of the closing of the poll. Malt liquor
licence.
- (5) A “bottle liquor licence” shall authorize the sale on the premises therein specified and not to be drunk thereon of not less than one reputed pint bottle or not less than one flask or bottle in its original state of importation and not more than twelve reputed quart or twenty-four reputed pint bottles of liquor in bottles properly and securely corked on any day other than Sunday, Christmas Day Good Friday and parliamentary municipal and divisional council election days before the closing of the poll between such hours as may be fixed by the licensing court in respect of each licence not being earlier than eight o’clock in the morning nor later than eight o’clock at night. Bottle liquor
licence.
- * *The provisions of paragraphs (c) (d) and (e) of sub-section (1) of this section shall mutatis mutandis apply to the holder of a “Bottle Liquor Licence” whenever he shall sell liquor in quantities as great as twelve reputed quart or twenty-four reputed pint bottles.*
- (6) A “general retail liquor licence” shall authorize the sale of liquors in any quantity on the premises therein specified to be consumed in or upon the premises on any day other General retail
liquor licence.

† Words in italics substituted by Ord. No. 17 of 1903, sec. 4 (1).

* Words in italics added by Ord. No. 8 of 1906, sec. 4.

than Sunday Christmas Day Good Friday and parliamentary municipal and divisional council election days before the hour of the closing of the poll between such hours as may be fixed by the licensing court in respect of each licence not being earlier than eight o'clock in the morning nor later than nine o'clock at night.

Club liquor
licence.

(7) (a) A "club liquor licence" shall authorize the sale and supply of liquor in any quantity to the members of the club at any time for consumption on the premises; provided that no place of accommodation entertainment or refreshment shall be considered a club where others than members or the invited guests of members are allowed entry or accommodation or where others than members are charged or permitted to pay for any refreshment or accommodation they may obtain therein.

(b) Every club liquor licence shall be issued to the chief manager or steward of the club. No transfer of any such licence shall be necessary upon any change of any such manager or steward but the person for the time being holding any such office shall be entitled to the privileges granted by the licence and subject to the duties and liabilities imposed upon the holder thereof.

†(c) No club liquor licence shall be issued or renewed under this Ordinance unless the applicant shall produce a certificate from the licensing court of the district which shall state that it has been made to appear to its satisfaction that the club mentioned therein is a bona fide club and is a proper club to be granted a licence. No such certificate shall be granted by the licensing court unless a copy of the rules of the club certified by the chairman thereof be deposited with the president of the said court at least four days before the sitting thereof.

(d) *Repealed by Ordinance No. 8, 1906, section five (ii).*

Railway
station liquor
licence.

‡ (8) *Licences for the sale of liquor at any railway station refreshment-room which is situated upon a railway to which the provisions of the Railway Regulation Ordinance 1903 or any amendment thereof are or shall hereafter be declared to be applicable shall be obtainable in the following manner and subject to the following conditions:—*

(a) *The lessee or occupier of such refreshment-room may apply to the General Manager of Railways (or to any officer of the Railway Administration appointed by the General Manager in that behalf) for the issue of such certificate as is mentioned in the next succeeding sub-section.*

(b) *The said General Manager or any such officer aforesaid may with the approval of the Resident Magistrate of the district in which the refreshment-room aforesaid is situate issue a certificate to the applicant authorizing the grant to him of a licence by the Receiver of Revenue of such district for periods of six months or*

† As amended by Ord. No. 8 of 1906, sec. 5 (i).

‡ This sub-section was substituted by Ord. No. 8 of 1906, sec. 6.

twelve months but every such licence shall expire on the thirtieth day of June or the thirty-first day of December next after the date of issue thereof as the case may be.

- (c) If the owner lessee or occupier of any such refreshment-room shall be the Railway Administration the said General Manager or officer aforesaid may issue without the approval aforesaid to any servant of such Administration a certificate authorizing the grant to such servant by the Receiver of Revenue of such a licence as is described in the last preceding sub-section.
- (d) Every such licence shall be renewable in accordance with the provisions under which it was issued for periods of six months or twelve months.
- (e) Every such licence may be transferred with the consent of the said General Manager or of such officer aforesaid; provided that in the case of a licence issued under sub-section (b) such transfer shall be approved by the Resident Magistrate of the district in which the refreshment-room aforesaid is situate.
- (f) Every such licence may at any time be cancelled by the said General Manager.
- (g) For or in respect of every such licence there shall be paid such sums as are prescribed by the Second Schedule hereto for a "railway station liquor licence" according as such licence be issued for six months or twelve months.

The sale of liquor at railway station refreshment-rooms shall be subject to the following provisions; that is to say that upon any day other than Sunday Christmas Day and Good Friday liquor shall be sold only to persons lawfully using the station premises for railway purposes or to persons taking meals at refreshment-rooms during such meals and upon Sunday Christmas Day and Good Friday liquor shall be sold only

- (i) to persons taking meals at such refreshment-rooms during such meals; or
 - (ii) to passengers fifteen minutes before the departure or fifteen minutes after the arrival of a long-distance train and the term "long-distance train" shall be deemed to mean in the case of arrival a train which has carried and in the case of departure a train which is about to carry passengers one hundred miles or more.
- (9) A "theatre liquor licence" shall authorize the holder thereof to sell by retail liquor in any building portion of which is used as a theatre during such hours as any entertainment in such theatre continues on any day excepting Sunday Christmas Day and Good Friday to be consumed on the premises.

Theatre
liquor licence.

Temporary
liquor licence.

(10) (a) A "temporary liquor licence" shall authorize the holder being also the holder of a general retail liquor licence to sell liquor by retail at any place of recreation or public amusement for the period during which such recreation or amusement continues excluding Sunday Christmas Day and Good Friday subject to such restrictions and conditions as the resident magistrate authorizing the issue of the same shall think fit.

(b) No certificate from a licensing court shall be required in respect of the granting of such a licence.

(c) Any person being the holder of a general retail liquor licence may apply to the resident magistrate for a certificate authorizing the receiver of revenue to issue to him a temporary liquor licence for the sale of liquor at any place of recreation or amusement.

(d) The resident magistrate to whom any such application shall be made may if he shall see fit issue a certificate wherein shall be stated the name of the applicant the place for which such temporary licence is to be granted the number of days and the hours during which sales thereunder are to be authorized and such restrictions and conditions as such magistrate may impose; the number of days mentioned in such certificate shall not exceed three.

(e) The resident magistrate shall give notice to the Commissioner of Police or senior police officer of the granting of any "temporary liquor licence" and the particulars thereof.

Brewers'
liquor licence.

* (11) A "brewers' liquor licence" shall authorize the holder thereof to manufacture malt liquor and to sell such liquor by wholesale only; the provisions of sub-section (1) of this section shall apply *mutatis mutandis* to such licence.

Prohibition
of distilling.

† 8. It shall not be lawful for any person within this Colony to distil spirituous liquors from any article *save as is otherwise provided in the Customs Amendment Ordinance 1906 or any regulations made thereunder* or to manufacture kaffir beer for sale.

Any person contravening the provisions of this section shall be liable on conviction to the penalties provided in section *forty-six* of this Ordinance and shall further be liable to forfeiture of all the liquor and all the machinery used for such distilling or manufacture found on his premises.

Exemptions
from
prohibition of
distilling.

‡ 9. The provisions of the last preceding section shall not apply to the owner or occupier of a farm or piece of land distilling spirituous liquors from the grapes or fruit grown on such farm or land for his own use.

LICENSING COURTS.

Constitution
of Licensing
Court.

10. A court for the consideration and determination of applications for or relating to the granting renewal or transfer of licences for the sale of intoxicating liquor is hereby constituted and shall be held in and for each district of this Colony. Such court shall consist of

* But see Act No. 9 of 1907, sec. 2, as read with Act No. 33, of 1909, sec. 7.

† As amended by Ord. No. 8 of 1906, sec. 7; words in italics inserted by Ord. No. 8 of 1906, sec. 7; see Ord. No. 4 of 1906, sec. 9.

‡ As amended by Ord. No. 8 of 1906, sec. 8.

- (1) the resident magistrate or in the absence of the resident magistrate such other Government official as the Lieutenant-Governor may appoint and in case no such official be appointed in time for the holding of the said court then the assistant resident magistrate ;
- (2) such justices of the peace (not being more than seven§ or less than two in number) residing in the district as the Lieutenant-Governor may appoint to be members.

11. The following persons shall be disqualified for appointment and if appointed shall not continue as members of a licensing court that is to say

Disqualification of members of court.

- (1) the holder of any licence for the sale of intoxicating liquor ;
- (2) any brewer or distiller ;
- (3) any person interested or concerned in any partnership or company with any holder of such licence as aforesaid or with any brewer or distiller ;
- (4) any paid officer or paid agent of any co-partnership or society interested in the sale or the prevention of the sale of intoxicating liquor ;
- (5) any person employed directly or indirectly as an agent for the purpose of making application for a licence for any other person ; or any partner of any person so employed as an agent ;
- (6) any person being the agent or manager of or a partner in any trade or calling carried on upon any premises licensed or about to be licensed or the owner or lessor of or the holder of any mortgage bond upon such premises ;
- (7) an unrehabilitated insolvent ;
- (8) any person who in this Colony or elsewhere has had a sentence of imprisonment without the option of a fine imposed upon him for the commission of some crime or offence not of a political character and has not received a full pardon therefor.

Any person so disqualified acting or sitting as a member of a licensing court shall be liable to a penalty not exceeding five hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three years or with imprisonment for a period not exceeding three years with or without hard labour.

The fact that a person is a member of a club holding a club liquor licence shall not in itself disqualify him from being a member of a licensing court.

12. Every justice of the peace appointed a member of the licensing court by the Governor* as aforesaid shall be appointed annually, or on the occurrence of any vacancy and shall hold office until the thirty-first day of December in the year in which he is appointed unless his office shall be vacated by death resignation ceasing to be a justice of the peace or to reside in the district. The first members of a licensing court appointed under this Ordinance shall hold office until the thirty-first day of December 1903.

Appointment of members.

§ Word in italics substituted by Ord. No. 8 of 1906, sec. 9.

* As in *Gazette* ; in Ord., 1902, the word "Lieutenant-Governor" is given.

When meetings to be held.

13. A meeting of the licensing court open to the public shall be held in each district and at such place or places therein as the Lieutenant-Governor may appoint on the second Monday in the months of June and December or as soon as possible thereafter for the purpose of taking into consideration all applications for the granting renewal transfer or removal of any licence for or in respect of which proper notice shall have been given; provided that the first meeting of the licensing court held under this Ordinance shall take place on the second Monday in January 1903 instead of on the second Monday in December 1902.

No application for renewal of licence to be entertained at a first meeting.

14. At the first meeting of a licensing court held under this Ordinance it shall not be competent for any person to apply for the renewal of any licence previously held by him; but the said court shall hear and determine applications only for the granting of new licences and every application for the renewal of a licence shall be treated as an application for a new licence.

Quorum.

15. Three members of the licensing court shall form a quorum for the dispatch of business. If a quorum be not present at any meeting of such court on the day appointed as advertised or at any adjournment thereof the said meeting shall be adjourned from day to day until a quorum can be present to hold such meeting.

Resident magistrate or assistant resident magistrate to preside at meetings.

16. The resident magistrate or person appointed by the Lieutenant-Governor under sub-section (1) of section *ten* of this Ordinance or the assistant resident magistrate as the case may be shall if present preside at every meeting of the licensing court; in case none of the aforesaid officials be present the members present shall elect one of their number to preside. The decision of the majority of members present shall be the decision of the court and the officer or person presiding shall in case of an equality of votes have a casting as well as a deliberative vote.

Lieutenant-Governor may appoint secretary.

17. It shall be lawful for the Lieutenant-Governor to appoint a person to act as secretary to a licensing court at such salary as he may deem fit.

Returns of licences to be forwarded to receiver of revenue.

18. The person presiding at any meeting of the licensing court shall within seven days after such meeting or any adjournment thereof is concluded cause to be forwarded to the receiver of revenue of the district a list signed by him specifying the names and places of residence of all persons to whom certificates shall have been granted by the court for obtaining or renewing licences and the nature of the licence authorized to be granted or renewed; and shall forward through the Commissioner of Police to the Attorney-General a return in the form in the Third Schedule to this Ordinance properly filled in showing

- (1) a return of the number of licences existing immediately before the sitting of the court;
- (2) a return of the number of licences authorized to be renewed;
- (3) a return of the number of licences transferred to other premises;
- (4) a return of the number of new licences authorized to be granted;

(5) a return of the number of applications for licences refused;

(6) a return of the average adult white population per general retail liquor licence and bottle liquor licence falling under sub-sections (2) (3) and (4).

19. (1) The licensing court may anything to the contrary notwithstanding in sub-sections (3) and (6) of section *seven* of this Ordinance when it shall be satisfied of its being for the convenience of the public grant to the holder of any restaurant *mall** or general retail liquor licence an extension of the hours for the sale of liquor under such licence until not later than twelve o'clock at night on payment of an amount equal to *one quarter** the annual amount chargeable in respect of such licences. Such extension of the hours shall be called midnight privileges.

Granting of midnight privileges.

(2) Such privileges shall be granted only for a period of six months but may be renewed at subsequent sittings of the licensing court for a similar period; and may on the report of the Commissioner of Police or senior police officer in the district be withdrawn at any time by the president and two members of the licensing court; provided always that on such withdrawal the holder of such privileges shall be entitled to a proportionate refund of the amount paid by him in respect thereof.

20. When any licensing court shall deem it necessary to take evidence respecting any question to be determined by such court such evidence shall be given on oath (which oath the person presiding is hereby authorized to administer) and shall be filed of record in the office of the resident magistrate of the district.

Evidence to be given on oath.

21. If any person shall upon any examination on oath before any licensing court wilfully and corruptly give false evidence such person shall be deemed and taken to be guilty of perjury.

False evidence perjury.

APPLICATIONS FOR AND RELATING TO LICENCES.

†22. Any person desiring to obtain a licence for the sale of liquor under this Ordinance (save and except where otherwise provided for) or the renewal of any such licence; or the removal of any licence from the licensed premises to any other premises in the same district; or the transfer of a licence by the holder thereof to any other person may make application in writing to the resident magistrate of the district at least six weeks before the next sitting of the licensing court setting forth his full name and address; the full names of his partners if any; the nature or description of the licence required to be obtained renewed or removed or transferred as the case may be; the number or name (if any) of the house and the street or road where the business is intended to be or is carried on or in case of the transfer of a licence the name of the person to whom the same is desired to be transferred; provided always that in case any application as aforesaid shall through inadvertence not be made in due time but shall be made within ten days thereafter the resident magistrate may if he sees fit accept the same for the consideration

When applications for licences to be made.

Particulars required to be set forth.

Late applications.

* Words in italics inserted and substituted by Ord. No. 68 of 1903, sec. 2.

† As amended by Ord. No. 17 of 1903, sec. 4 (2); see also Act No. 33 of 1909, sec. 3.

thereof by the licensing court at the next meeting or any adjournment thereof upon condition of payment of the sum of five pounds and upon such terms as to notice being given as the magistrate may prescribe; such sum of money shall be denoted by revenue stamps to be affixed to the application and cancelled by the magistrate; provided always that such application shall be considered by the licensing court only after its approval of the action of the magistrate in accepting it.

Resident
magistrate
to publish
notice of
application.

‡23. (1) The resident magistrate receiving any such application as in the last preceding section mentioned shall cause a notice to be posted in some conspicuous place at or in his office and shall cause it to be published in the *Gazette* and in some newspaper circulating in the district in which the court is held containing the name of the applicant the nature of the application the situation of the premises in respect of which the application is made the day on which and the place where the court will sit for hearing such application.

Report by
Commissioner
of Police.

(2) The resident magistrate shall as soon as possible on receiving such application cause the name of such applicant as aforesaid to be sent to the Commissioner of Police or senior police officer of the district whose duty it shall be before the sitting of the court to report as fully as possible to the resident magistrate on all matters which would affect the decision of the said court in respect of such application as aforesaid.

Time of
publication of
notice in sub-
section (1).

(3) The notice mentioned in sub-section (1) of this section shall be posted and published thirty days at least before the sitting of the said court and a copy thereof shall be sent by post or otherwise to every member constituting such court; provided that no licence authorized to be granted by any such court shall be capable of being questioned by reason that any such notice was not duly posted published or sent as aforesaid.

Stamp to be
affixed to
applications.

(4) Every application as aforesaid shall bear a revenue stamp of one pound to be affixed by the applicant and cancelled by the resident magistrate.

Death or
insolvency of
applicant.

24. In case the applicant for any licence shall die or shall become insolvent after applying for the grant or renewal of a licence on or before the day for considering such application by the licensing court such court may if it shall think fit grant a certificate for such licence to the widow of any deceased applicant or to the executor *curator bonis* or trustee as the case may be of the estate of such applicant.

OBJECTIONS TO APPLICATIONS FOR LICENCES.

Who may
object to
issue of
licences.

*25. Any constable or member of a police force and any person residing in the municipality town or village wherein a licence is applied for may either individually or jointly with others object in writing at any meeting of a licensing court to the granting or renewal of such licence.

Where an objection is made in writing to the renewal of a licence the licensing court may at the request of the applicant for such renewal summons the objector to attend the said court for the purpose of being examined on oath on the grounds of such objection.

‡ See Act No. 33 of 1909, sec. 3.

* As amended by Ord. No. 17 of 1903, sec. 4 (3).

- *26. (1) All objections to the granting or renewal of a licence shall be sent in writing to the secretary of the licensing court and if there be none to the resident magistrate and where the objection is to the renewal of a licence notice thereof shall be given to the applicant personally or by means of a registered letter by the person or persons objecting at least five days before the holding of the court. How objections to be lodged.
- (2) Every applicant for a new licence or for the renewal of an existing licence shall appear in person before the licensing court and may be called upon by the court to answer on oath such question as the court may deem it necessary to put to him ; but it shall be lawful for him to be represented at the hearing of his application by an advocate or attorney entitled to practise as such in any superior court in this Colony or by an agent-at-law admitted to practise in a court of resident magistrate. Applicant to appear in person, but may be represented by advocate or attorney.
- (3) Every objector to the granting or renewal of a licence may appear personally before the licensing court or be represented by any person deputed by him in writing. Objector may appear personally or be represented.
- (4) The council of any municipality may authorize by writing under the hand of the chairman thereof any person to appear before the licensing court for the purpose of objecting on behalf of the inhabitants to the granting or renewal of a licence in such municipality. Objections by municipality.
27. The court shall have the right to refuse to grant or renew a licence without giving any reasons and may grant a licence subject to such conditions as it may deem fit not repugnant to the provisions of this Ordinance which shall be embodied in the licence. Court may refuse to grant licence without giving reasons.
- *28. (1) The licensing court may of its own motion take notice of any matter or thing which in the opinion of the members thereof would be an objection to the granting or to the renewal transfer or removal of a licence although no objection has been made thereto by any person. Discretion of the court.
- (2) In any case when the application is for the renewal transfer or removal of a licence the court shall inform the applicant of the objection and shall adjourn the further consideration of the application should the applicant so request for any period not less than four days in order that the person affected by such objection may have the opportunity of replying thereto. Objections to renewal, transfer, or removal.
- (3) The court shall after such adjournment give notice in writing signed by the secretary and if there be none then by the president thereof of the cause of objection to the person affected thereby and of the day on which the adjourned application will be considered. Notice to applicant.
29. In case the renewal of a licence held by any person shall be refused by the licensing court and such person shall not during the preceding twelve months have been convicted of any offence against this or any other law relating to the sale of intoxicating liquors he shall upon payment of a proportional part of the cost of a licence such as that held by him be entitled to Extension of existing licences where renewal disallowed.

* See Act No. 33 of 1909, sec. 3.

obtain a licence for a period of one month for the purpose of disposing of the liquor then on his premises *to commence from the day after the last day of the sitting of the court by which the renewal of his licence had been refused or from the termination of his existing licence whichever is later.*†

CASES IN WHICH LICENCES CANNOT BE GRANTED RENEWED OR TRANSFERRED.

Reasons for refusal of licences.

30. It shall not be competent for the licensing court to grant any certificate for a new licence or for the renewal of an existing licence when any of the following objections is proved to its satisfaction :—

(1) That in the case of a new licence the applicant is of bad fame or character or of drunken habits or has previously forfeited a licence or has been convicted at any time previous to his application of selling liquor without a licence.

(2) That the premises in respect of which the application is made are out of repair or are not kept in a clean and wholesome state.

(3) That in the case of a new licence the number of premises already licensed is sufficient for the requirements of the neighbourhood.

(4) That in the case of a new licence the premises in respect of which the application is made are in the vicinity of a place of worship school native location or compound or that the quiet of the place in which such premises are situated will be disturbed if such licence is granted.

(5) That in the case of a renewal of a licence the business is conducted in an improper manner and drunkenness permitted upon the licensed premises or that the conditions upon which the licence was granted have not been satisfactorily fulfilled ; or that a licensed place is no longer required in the neighbourhood.

Persons to whom court shall not grant licences.

31. It shall not be competent for the licensing court to grant a certificate for a new licence or for the renewal of any existing one or for the transfer of a licence to any person or to the wife of any person

(1) who here or elsewhere has had a sentence of imprisonment imposed on him for the commission of some crime or offence not of a political character without the option of a fine and has not received a full pardon therefor ;

(2) not residing in this Colony ;

(3) who is an unrehabilitated insolvent ;

(4) who is under the age of twenty-one years ;

(5) who is a coloured person ;

(6) holding an office or appointment under Government ;

(7) occupying premises of which any constable or member of a police force is the proprietor or landlord or in which such constable or member has any interest ;

† Words in italics added by Ord. No. 17 of 1903, sec. 4 (4).

(8) who has at any time been convicted of selling liquor to a coloured person unless he has received a free pardon in respect of such conviction.

A licence issued or transferred to any person disqualified under this section shall be null and void and the premises in respect of which it is issued or transferred shall be closed for the sale of liquor by order of the resident magistrate of the district in which they are situated.

Licence issued to disqualified person null and void.

32. *Repealed by Act No. 33, 1909, section one.*

Retail licences.

33. (1) No licence under this Ordinance shall be granted or renewed in any case in which a petition against the granting or renewal thereof has been lodged with the secretary to the licensing court and if there be no secretary then with the resident magistrate at least seven days prior to the sitting of the court signed by a majority of the voters and if there be no voters then of the white male population above the age of twenty-one years resident in the village town municipality or ward of the municipality in which the premises are situated in respect of which the application for a licence is made; provided always that it is proved to the satisfaction of the licensing court that notice of intention to present such petition was given to the person applying for the renewal of his licence by some person signing the same at least fourteen days before the day fixed by law as the day upon or before which any application for the renewal of the licence should be made.

Petition against granting or renewal of licences.

(2) For the purposes of this section the latest roll of voters framed by the local authority shall be conclusive evidence both of the number of voters and of the fact that any person whose name appears therein is a voter; provided always that if upon any petition in favour of the granting or renewal of a licence and upon any petition objecting thereto the name of the same person shall appear then the said name shall be of no effect and shall be struck out of both petitions.

(3) The provisions of this section shall not apply to hotel or railway station liquor licences and shall in any municipality or ward take effect only when and as soon as the Lieutenant-Governor by Proclamation in the *Gazette* has so declared; provided that such Proclamation shall be published in the *Gazette* at least ten weeks before the sitting of the licensing court.

PLACES IN RESPECT OF WHICH LICENCES MAY NOT BE GRANTED.

34. (1) No certificate for a general retail liquor licence or bottle liquor licence shall be granted by the licensing court in respect of any premises situated in any town village stand-township or on any public digging otherwise than in premises having the bar entrance opening in or towards a public street or thoroughfare and with sufficient floor space for the accommodation of the public; *provided that such prohibition shall not apply where the licensing court grants a certificate for a hotel liquor licence to be held with a general retail licence** and the holder of any general retail or bottle liquor licence who

No back or side entrances

* Words in italics inserted by Ord. No. 8 of 1906, sec. 10.

allows any customers to enter or leave the apartment intended for the sale of liquors by a back or side door or by a door communicating with a shop or business *shall be deemed to be guilty of a contravention of this Ordinance and shall be liable on conviction to a penalty of twenty-five pounds.*†

or screens.

(2) No licensed person shall use any screen or other arrangement whereby a full view of the bar is prevented from the bar entrance.

Conditions in respect of place and size of buildings.

‡35. No licence under this Ordinance save a railway station liquor licence shall be granted except in respect of premises situated in a recognized town village stand-township or on proclaimed public diggings; provided that an hotel liquor licence may be granted in respect of an hotel or inn situated on any public road (save and except the road known as the Main Reef Road on the Witwatersrand) distant at least twelve miles from the office of a resident magistrate or assistant resident magistrate and at least twelve miles from any other licensed hotel on it being proved to the satisfaction of the licensing court that there exists on the place for which a licence is applied for a suitable building for an hotel built of stone or brick or iron properly lined inside with brick with at least three bedrooms and one sitting room distinct from the bar all properly furnished and giving sufficient accommodation for at least six persons together with a suitable stable for at least eight horses and proper sanitary arrangements.

No licence may be granted for premises on mynpatches etc.

36. No licence under this Ordinance shall be granted for the sale of liquor on any ground given out as a mynpacht claim storage site (*bewaarpplaats*) machinery stand or water-right nor on any stand situated on any of the places mentioned in or on any ground reserved under article *fifty-three* of Law No. 15 of 1898; *provided that nothing herein contained shall apply to mynpatches on the farm Elandsfontein No. 1 numbered 302A 302B 333 and 337 on which the townships of Germiston and George Town are situated.*§

No licence for premises in native locations etc.

37. No licence under this Ordinance shall be granted in respect of any premises situated in a native location nor in any area set aside for coloured persons to reside in nor in any area partially occupied by coloured persons and which may be proclaimed by the Lieutenant-Governor as an area within which intoxicating liquor shall not be sold; nor shall any intoxicating liquor be taken into such location or area as aforesaid without the consent of the resident magistrate of the district in which such location or area is situated.

TRANSFER AND REMOVAL OF LICENCES.

Transfer of licence.

38. Any person being the holder of a licence (other than a temporary or club licence) who shall during the currency thereof sell or dispose of his business or the house or premises in respect of which such licence was granted may make application to the resident magistrate for a temporary

† Words in italics substituted by Ord. No. 17 of 1903, sec. 5.

‡ For definition of recognized town or village and of proclaimed diggings see Act No. 33 of 1909, sec. 4.

§ Words in italics added by Ord. No. 2 of 1903.

transfer of such licence to the purchaser of such business or to the purchaser or lessee of such premises as the case may be : and the magistrate and any two members of the licensing court may if they think fit and upon payment by the applicant of the sum of one pound to be denoted by revenue stamps affixed to the original licence and cancelled by the resident magistrate grant temporary transfer of such licence accordingly.

39. The holder of any licence (except a temporary licence) who may desire to remove his licence from the licensed premises to any other premises in the same district distant not more than one mile therefrom may make application to the resident magistrate to authorize such removal ; and such magistrate and any two members of the licensing court if satisfied that to wait for the next meeting of the licensing court would subject such holder to serious loss or inconvenience and if they think fit after hearing any objections to such removal may upon the payment of the sum of one pound to be denoted by revenue stamps affixed to the original licence authorize such removal after not less than thirty days' notice of such application shall have been given by advertisement in the *Gazette* and in a newspaper circulating in the district and shall have been affixed in a conspicuous place on the outside of the premises to which it is proposed to remove the licence.

Removal of
licensed
premises.

40. Any person to whom a licence may be temporarily transferred and any person who may be authorized to remove his licence to other premises shall at the next licensing meeting apply for a licence in the same manner as if he were not a licensed person.

Fresh appli-
cation to be
made.

41. In case the temporary transfer of a licence or the removal of a licence as aforesaid shall not be ratified by the licensing court at its next meeting upon consideration of the application then made in respect thereof such licence shall as to the person to whom the same was originally granted or in respect of the premises originally licensed be considered to be in the same position as if no such transfer or removal had taken place and an application for the renewal of the licence by the transferee shall at the request of the transferor be deemed and taken to be an application by him for such renewal.

Where trans-
fer or removal
not ratified.

42. In case of the death of the holder of any licence the widow (if any) or the executor of the deceased person or failing the appointment of an executor any *curator bonis* lawfully appointed for taking charge of the estate of such deceased person or any person approved by the resident magistrate and in case of insolvency the trustee of the estate of such insolvent *and in the case of liquidation the official liquidator** may carry on the business until the next meeting of the licensing court either personally or by an agent approved of by any writing under the hand of the resident magistrate without any formal transfer of the licence. †*Such widow executor curator trustee or liquidator may at the*

Death of
holder of
licence.

* Words in italics inserted by Ord. No. 8 of 1906, sec. 11 (1).

† Words in italics added by Ord. No. 8 of 1906, sec. 11 (2).

next licensing meeting apply for the renewal of the licence for a period not exceeding six months as if such licence had been held by such widow executor curator trustee or liquidator.

Powers and duties of representative of deceased.

43. Any person to whom a licence may be temporarily transferred or who may be carrying on or conducting the business of licensed premises as the widow or *curator bonis* or executor of the estate of any deceased person or as the trustee of any estate of any insolvent or as an approved agent of any such widow curator executor or trustee shall possess all the rights and be subject and liable to all duties obligations and penalties of the original holder of the licence.

Marriage of female licensee.

44. In the case of the marriage of any woman who shall have obtained any licence such licence shall confer on her husband the same privileges and shall impose upon him the same duties obligations and liabilities as if such licence had been granted to him originally.

OFFENCES.

Sign-board.

45. Every licensed person except the holder of a temporary licence or club liquor licence shall cause to be painted and fixed in front of the premises in respect of which his licence is granted in a conspicuous place and in letters two inches at least in length his name with the addition of the word "licensed" and of words sufficient to express the business for which the licence has been granted. No person who is not licensed shall have any words or letters on his premises importing that he is licensed and no licensed person shall have any words or letters importing that he is licensed in any other way than that in which he is duly licensed. Any person guilty of a contravention of this section shall be liable to a penalty of fifty pounds and in default of payment to imprisonment for a term not exceeding three months with or without hard labour.

Coloured persons not to be supplied.

*46. No person shall sell barter give or otherwise supply to any coloured person any intoxicating liquor; provided always that liquor may be supplied to a coloured person for medicinal purposes or sacramental use and in such case the burden of proof shall be upon the person who supplied it to show that the liquor was required for such purpose.

Penalties.

Any person contravening the provisions of this section shall on conviction be liable

(a) for a first offence to imprisonment with or without hard labour for a period not less than six months and not exceeding twelve months and at the discretion of the court in addition to such imprisonment to a fine not exceeding two hundred and fifty pounds and in default of payment to imprisonment with or without hard labour for a further period not exceeding six months;

(b) for a second offence to imprisonment with or without hard labour for a period not less than twelve months and not exceeding two years and in addition to such imprisonment at the discretion of the court to a fine not exceeding five

* As to arrest see Ord. No. 1 of 1903, sec. 24 (g). For exceptions see Act No. 2 of 1907, secs. 17 (4) and (5).

hundred pounds and in default of payment to imprisonment with or without hard labour for a further period not exceeding twelve months ;

(c) for a third or any subsequent offence to imprisonment with or without hard labour for a period not less than two years and not exceeding three years and in addition to such imprisonment at the discretion of the court to a fine not exceeding one thousand pounds and in default of payment to imprisonment with or without hard labour for a further period not exceeding two years.

In any summons or indictment preferred before any court charging any person with a contravention of the provision of this section it shall not be necessary to set out the names of the coloured persons to whom intoxicating liquor is alleged to have been sold bartered given or otherwise supplied ; but it shall be sufficient to allege that such sale barter gift or supply was effected to a coloured person ; provided always that nothing in this subsection* contained shall render it necessary to set out accurately in such summons or indictment all other material particulars of the charge.

47. Any person being the holder of a licence who shall be convicted of contravening the provisions of the last preceding section shall in addition to any other penalty forfeit his licence and no licence shall at any time thereafter be granted to such person unless and until he shall have received a free pardon for such conviction nor shall it be granted to any person in respect of the same premises for a period of five years from the date of such conviction.

Forfeiture of licence.

†48. No coloured person shall obtain by purchase or barter or be in possession of any intoxicating liquor.

Coloured persons not to obtain liquor and penalties.

Any coloured person contravening the provisions of this section shall on conviction be liable to be imprisoned with or without hard labour for a period not exceeding three months.

49. (1) Notwithstanding anything in the previous sections contained to the contrary it shall be lawful for the Lieutenant-Governor to authorize by notice in the *Gazette* under the hand of the Attorney-General the brewing of Kaffir beer not containing more than 3 per cent. of alcohol on the premises of any person or company or corporation employing more than fifty coloured labourers and the supply gratis thereof for consumption on the premises only to bona fide employees being coloured persons of such person company or corporation on such conditions as the Lieutenant-Governor may from time to time determine.‡

Exceptions in respect of use of Kaffir beer.

(2) Nothing in the previous sections contained shall prohibit the use gift or possession of Kaffir beer not containing more than 3 per centum of alcohol by coloured persons in any native location or village distant more than twelve miles from the nearest town municipality or public digging.

50. (1) No holder of any retail liquor licence shall employ a female to serve at the bar in selling or supplying intoxicating liquors.

Persons prohibited from serving liquor.

* As in *Gazette* ; in Ord., 1902, the word "paragraph" is given.

† As to arrest see Ord. No. 1 of 1903, sec. 24 (g).

‡ For conditions see Govt. Notice No. 710 of 1902 (*Gazette*, 31st December, 1902, p. 1830).

(2) No holder of any liquor licence shall employ a person under the age of sixteen coloured person or person convicted of any offence under this Ordinance to sell or in any way dispose of intoxicating liquor.

Any person contravening either of the provisions of this section shall be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment for a period not exceeding three months.

Prohibition of payment of wages on licensed premises.

51. Any master or other person employing workmen servants or labourers who pays or causes any payment to be made to any such workman servant or labourer in or at any premises licensed for the sale of liquor shall for every such offence be liable to a penalty not exceeding ten pounds; but nothing herein contained shall extend to any holder of any liquor licence who pays upon his own licensed premises the workmen servants or labourers employed by him in connection with his licensed premises.

Persons under sixteen years of age not to be supplied and penalties.

*52. No person shall with or without a licence sell or knowingly permit to be sold or delivered or knowingly permit to be delivered or supplied to any person under the age of sixteen years any intoxicating liquor or permit any such person to drink such liquor on his premises.

Any person guilty of contravening this section shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding three months or both such fine and such imprisonment; and on a second conviction he shall in addition to such fine and imprisonment forfeit his licence and no licence shall be issued to such person for a period of five years.

Resident magistrate may restrict sale of liquor to individuals and penalties for selling where restricted.

53. (1) The resident magistrate of any district may by an order in writing forbid the selling of liquor to any person who shall within the space of three months have been thrice convicted of drunkenness or who having been twice so convicted shall have been convicted of assault; or who by excessive drinking of liquor mis-spends wastes or lessens his estate or greatly impairs his health or endangers the peace of his family. Every such order shall be in force during such time as the magistrate may determine not however exceeding twelve months in the district wherein the same was granted and in any other district into which such person may remove or be *and notice of such order shall be given by the magistrate to the senior officer of police in his district who shall forthwith communicate the same to the person mentioned in the said order and as far as possible to every holder of a licence in the district in which such person resides.*†

(2) Every licensed person who shall with a knowledge of such prohibition sell exchange give or in any other way dispose of intoxicating liquors to any such person and every other person who with such knowledge shall give to purchase or procure for such prohibited person any liquor shall on conviction be liable to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a period not

* As amended by Ord. No. 8 of 1906, sec. 12.

† Words in italics added by Ord. No. 17 of 1903, sec. 4 (6).

exceeding one month or to both such fine and imprisonment and shall be further liable to compensate the person to whom he shall have sold or given such liquor as aforesaid for any injury which such person shall in consequence thereof have suffered and further to pay compensation for all damage done or caused by such person acting under the influence of the liquor sold or supplied to him as aforesaid.

54. The holder of any hotel liquor licence granted on condition that he will provide accommodation to visitors who shall fail or refuse except for some sufficient reason to the satisfaction of the resident magistrate to supply any visitor with lodging meals or accommodation shall for each offence on conviction be liable to a fine not exceeding ten pounds and in default of payment to imprisonment for a period not exceeding one month with or without hard labour.

Penalty for refusing accommodation.

55. No holder of a general retail liquor licence or bottle liquor licence shall be permitted to carry on any other business in the same premises except the sale of non-intoxicating drinks light refreshments tobacco cigars and cigarettes by retail. Any person contravening this section shall be liable on conviction to a fine not exceeding twenty-five pounds or in default of payment to imprisonment for a period not exceeding two months with or without hard labour.

Business of general retail or bottle liquor licence holder limited.

*56. The holder of any licence who shall be guilty of any of the following acts or offences shall upon conviction be liable in respect of each act or offence to a penalty not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months; that is to say if he shall

Offences by licenceholder.

(1) permit drunkenness or any riotous or quarrelsome conduct to take place upon his premises;

(2) sell liquor to any person already in a state of intoxication or by any means encourage or incite any person to drink liquor;

(3) sell liquor to any constable or policeman while on duty or knowingly harbour or suffer to remain on his premises any constable or policeman during any time appointed for him to be upon duty unless for the purpose of keeping or restoring order or in the execution of his duty;

(4) suffer any unlawful game or gambling to be carried on on his premises;

(5) permit his premises to be a brothel or the habitual resort or place of meeting of reputed prostitutes;

(6) keep his licensed premises open for the sale of liquor or sell or expose any liquor for sale during any time when he is not authorized by the licence to sell; or allow any liquors purchased before the hour of closing to be consumed on such premises after such closing;

(7) *sell or dispose of liquor contrary to the conditions of his licence or in any manner not authorized by the provisions of section seven applicable to such licence.*†

* See Ord. No. 8 of 1906, sec. 15.

† Sub-sec. (7) added by Ord. No. 17 of 1903, sec. 4 (7).

And in case of a second or subsequent conviction every such holder shall be liable to a penalty not exceeding one hundred pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding six months.

Trading
without a
licence.

‡57. Any person who shall contrary to the provisions of this Ordinance sell deal in or dispose of intoxicating liquors without a licence or sell or offer or expose for sale any such liquors at any place where he is not authorized by his licence to sell shall upon conviction be liable to the penalties provided in sections *forty-six* and *forty-seven* of this Ordinance.

Club licences;
abuse of.

58. Any holder of a club liquor licence who shall sell or allow to be sold liquor to any person not being a member of such club shall be liable for each offence to a penalty not exceeding one hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months.

Offences by
retail licence
holder
rendering
licence liable
to forfeiture
and penalties.

59. The holder of any retail liquor licence shall be liable to forfeit such licence in addition to any other penalty by this Ordinance provided

(1) if he shall permit any other person to manage superintend or conduct the business of the licensed premises during his absence for a longer period than one month without the consent in writing of the resident magistrate. Any person who shall at any time be lawfully managing superintending or conducting the business of the holder of any licence shall be subject and liable to the same duties obligations and penalties as such holder; provided that nothing herein contained shall be taken to relieve such holder from any duties obligations or penalties to which he may by law be subject or liable;

(2) if he shall whether present in such premises or not permit any unlicensed person to be in effect the owner or part owner of or interested in the business of the licensed premises unless with the consent of *the president and two members** of the licensing court;

(3) if (being the keeper of any inn or hotel) he shall fail to provide and maintain the accommodation required according to the conditions prescribed by the licensing court granting such licence;

(4) if (except in the case of fire tempest or other cause beyond his control) he shall allow the licensed premises to become ruinous or dilapidated;

(5) if he shall permit his premises to be used as a brothel or the habitual resort or place of meeting of reputed prostitutes;

(6) if he shall be twice convicted of selling offering or keeping for sale any adulterated liquor;

(7) if he shall suffer any unlawful game or gambling to be carried on in his licensed premises;

(8) if he shall be convicted of any offence under this Ordinance and a previous conviction within the preceding six months of the same or any other offence under this Ordinance shall be proved;

‡ As to arrest see Ord. No. 1 of 1903, sec. 24 (g); as to abolition of minimum penalties see Act No. 33 of 1909, sec. 6.

* Words in italics inserted by Ord. No. 17 of 1903, sec. 4 (8).

(9) if he shall be convicted of any crime and sentenced to imprisonment without the option of a fine.

60. In any proceeding relative to any offence under this Ordinance it shall not be necessary to show that any money actually passed or that any liquor was actually consumed if the court hearing the case be satisfied that a transaction in the nature of a sale actually took place or that any consumption of liquor was about to take place; and proof of consumption or intended consumption of liquor on licensed premises by some person other than the occupier or a servant in such premises shall be evidence that such liquor was sold to the person consuming or about to consume the same by or on behalf of the holder of such licence.

Evidence of sale of liquor.

If any vendor of non-intoxicating beverages not being duly licensed shall supply intoxicating liquor to mix or be taken with such beverage he shall be deemed to have sold such intoxicating liquor.

61. In any proceeding against any person for selling or allowing to be sold any liquor without a licence such person shall be deemed to be unlicensed unless he shall produce his licence or give other satisfactory proof of his being licensed. The fact of any person not holding a licence having any signboard or notice importing that he is licensed upon or near his premises or having a house or premises fitted up with a bar or other place containing bottles casks or vessels so displayed as to induce a reasonable belief that liquor is sold or served therein or having liquor concealed or more liquor than is reasonably required for the persons residing on such premises shall be deemed *prima facie* evidence of the unlawful sale of liquor by such person.

Onus of proof.

62. (1) If any person other than the licensed holder a member of his family his agent or servant or a person lodging in the licensed premises be found in any bar on such premises during the hours in which the sale or disposal of liquor to the public is prohibited it shall be taken to be *prima facie* evidence of a sale of liquor during such hours. The licence holder on whose premises any such person is found during such hours shall be liable to a penalty not exceeding five pounds; but nothing in this section contained shall apply in the case of persons passing through any bar in any licensed premises for the sole purpose of obtaining access to any other part of such premises.

Persons on premises of retail licence-holder during prohibited hours.

(2) If any coloured person is found at any time in any bar on the premises of the holder of a retail licence such coloured person not being in the employ of such licensed holder it shall be taken to be *prima facie* evidence of a sale of liquor to such coloured person.

Coloured persons on premises.

63. Any person convicted of contravening any of the provisions of this Ordinance for or in respect of which no penalty is specially provided shall be liable to a penalty not exceeding twenty pounds and in default of payment to imprisonment with or without hard labour for any period not exceeding three months; and when a penalty has been provided for any offence without any period of imprisonment in default of payment thereof then the person convicted of such offence shall be liable

Offences for which no penalty provided

to imprisonment with or without hard labour for a period not exceeding one month if the penalty do not exceed ten pounds; or

to imprisonment with or without hard labour for a period not exceeding three months if the penalty exceed ten pounds and do not exceed fifty pounds;

to imprisonment with or without hard labour for a period not exceeding six months if the penalty exceed fifty pounds;

unless such penalty be sooner paid.

Jurisdiction of resident magistrate or assistant resident magistrate.

64. All offences against this Ordinance may be summarily tried by the resident magistrate or assistant resident magistrate within whose jurisdiction such offences shall have been committed and any such resident magistrate or assistant resident magistrate may impose the penalties respectively by this Ordinance provided.

POWERS AND DUTIES OF RESIDENT MAGISTRATES JUSTICES OF THE PEACE AND POLICE OFFICERS.

Report of chief officer of police.

65. (1) It shall be the duty of the chief officer of police of every district to report to the licensing court any licensed premises which are out of repair or have not reasonable accommodation or proper or sufficient sanitary or drainage requirements; and any case in which the holder of a licence shall be of drunken habits or shall keep a disorderly house.

Entry by police.

(2) Any officer of police and any constable authorized in writing by an officer of police or by the resident magistrate may enter any licensed premises during the hours such premises are open and inspect and examine every room and part thereof for the purpose of the report in the last sub-section mentioned.

(3) Any officer of police or any constable on duty may enter any licensed premises at any time when he has reasonable grounds for believing that liquor is being sold in such premises contrary to the provisions of this Ordinance.

Penalty for obstructing police.

(4) Any person resisting or obstructing an officer of police or constable in the execution of his duty as aforesaid shall be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Arrest of intoxicated persons.

66. Any person found by a resident magistrate justice of the peace or police constable drunk and incapable or drunk and noisy in or near a street road or other public thoroughfare or in a public house shop warehouse hotel or any other public place may be arrested without warrant and brought without any delay before the court of resident magistrate. Every such person shall on conviction be liable to a fine not exceeding five pounds for the first offence and in default of payment to imprisonment with or without hard labour for a period not exceeding fourteen days; and for a second or subsequent conviction he shall be liable to a fine not exceeding fifteen pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding one month.

Penalties.

Inspection of unlicensed premises by police.

67. It shall be lawful for any police constable having a special written authority from a magistrate justice of the peace or police officer of or above the rank of inspector at all reasonable

hours to enter any unlicensed premises or any wagon cart or other vehicle in which it shall reasonably be suspected that any intoxicating liquor is sold or kept for sale and search such premises wagon cart or other vehicle. Any liquors found in the course of search may be seized and removed and may be declared forfeited by any court on conviction before it of the owner or person found in possession thereof. Provided always that when there is danger that the delay occasioned by obtaining such written authority will defeat the objects of this section any police constable may exercise the powers conferred hereby without any written authority but he shall as soon as possible report what he has done to the Commissioner of Police or senior officer in the district and if there be none then to the resident magistrate.

Liquors may be confiscated.

*68. Any constable or member of the police may demand the name and address of any person found on premises in which he seizes or from which he removes any liquor under the provisions of this Ordinance; and if such person shall refuse to comply with such demand or shall give a name or address which the constable or member of the police demanding the same has reasonable grounds to believe is false he may apprehend such person without warrant and take him as soon as possible before a resident magistrate or justice of the peace. Any such person who refuses to give his name or address when so demanded as aforesaid or gives a false name or address shall on conviction be liable to a penalty not exceeding five pounds.

Police may demand names and addresses of persons on premises.

69. It shall be lawful for any resident magistrate justice of the peace or police officer to enter in or upon any premises where intoxicating liquors are being sold and to demand inspection of the licence authorizing such sale. Any holder of a licence refusing to produce such licence shall be liable to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding one month or to such imprisonment without the option of a fine.

Inspection of licences.

70. Where any riot or tumult occurs or is expected to occur in any place the resident magistrate or any two justices of the peace may order any licensed premises under this Ordinance in or near such place to be closed during such time as such magistrate or justices of the peace may see fit; and any person carrying out such order may use such force as may be necessary for closing such premises. Any person resisting or obstructing the execution of any such order and any licensed person selling liquor in contravention of such order shall on conviction be liable to a penalty not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Resident magistrate or justice of the peace may order licensed premises to be closed.

LIQUOR TRAFFIC INSPECTION.

71. The Commissioner of Police shall be empowered with the approval of the Lieutenant-Governor to appoint in and for any district one or more liquor traffic inspectors and so many sub-inspectors as he may think fit. The said Commissioner shall be empowered with the approval of the Lieutenant-Governor to remove any inspector or sub-inspector so appointed.

Appointment of inspectors.

* See Ord. No. 1 of 1903, sec. 24 (g) as to arrest.

Duties of
inspectors.

72. It shall be the duty of such inspectors and sub-inspectors with the assistance of a special detective police force and the ordinary police authorities to see that the provisions of this Ordinance are properly carried out.

Lieutenant-
Governor
may make
regulations.

73. It shall be lawful for the Lieutenant-Governor from time to time to make regulations for the proper carrying out of the duties of such inspectors and sub-inspectors as aforesaid.

Inspectors to
report on
applications
for licences.

74. It shall be the duty of every liquor traffic inspector in whose district any premises are situated in respect of which previous notice of any application for any licence or for the renewal of any licence under this Ordinance is given to furnish to the Commissioner of Police a report containing the following particulars :—

Licence for New Premises.

- (1) A description of the house premises and furniture.
- (2) A statement whether the applicant is a fit and proper person to have the licence applied for and is known to be of good character and repute.
- (3) A statement whether the applicant appears to be or not to be the true owner of the business or premises proposed to be licensed.

Renewal of Existing Licence.

- (4) If the application be for a renewal by a person who has held a licence during the whole or any part of the preceding year a statement as to the manner in which the house has been conducted during such year or part thereof. If any convictions have been recorded against the licensee the particulars of the conviction shall be stated. The report shall also contain a statement as to the character of the persons frequenting the house.

The statement or report referred to in this section shall set forth in detail the facts upon which any conclusion or expression of opinion is based and if the inspector is unable to supply any of the foregoing particulars he shall specially state in his report the reason of his inability.

The Commissioner of Police shall forward to the resident magistrate seven clear days before the sitting of the licensing court the said report with such remarks as he may deem it necessary to make thereon and also his opinion as to whether the granting of the licence sought for is required for the public convenience.

Resident
magistrate to
lay report
before
meeting.

The resident magistrate shall lay the said report before the licensing court at every meeting called to consider the application therein referred to and such report shall be considered in law as a privileged statement.

Inspectors to
attend
meeting of
court.

75. It shall be the duty of an inspector to attend every meeting of the licensing court in the district for which he is appointed in order to afford information and assistance to the court in matters connected with the working of this Ordinance and every

inspector so attending may be cross-examined on oath as to matters contained in his report by any person or the agent of any person who is interested in the renewal of the licence dealt with in the said report.

76. Any liquor traffic inspector or sub-inspector who directly or indirectly receives or agrees to receive from any person any fee advantage or reward whether pecuniary or of any other kind on account of anything done or to be done by him in connection with his office or employment or on account of omitting to perform his duties under this Ordinance shall be dismissed from his office and shall also be liable on conviction by a competent court to imprisonment with or without hard labour for a period not exceeding five years. And any person who directly or indirectly gives offers or promises to give any such fee advantage or reward shall for every such offence be liable to imprisonment with or without hard labour for a period not exceeding seven years and to a fine not exceeding six hundred pounds and in default of payment to a further term of imprisonment with or without hard labour for a period not exceeding two years.

Bribery of inspectors.

77. Every liquor traffic inspector or sub-inspector shall have power and authority to

Powers of inspectors.

(1) enter any licensed premises wherein he shall have reasonable grounds to suspect that any adulterated liquor is sold; and search for and demand to have delivered to him samples of any liquor sold or kept on such premises and on refusal or neglect to supply such samples he may seize and carry away a sufficient quantity for the purpose of investigation; and every person so refusing or resisting or declining entrance as aforesaid shall be liable on conviction to a penalty not exceeding twenty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months;

(2) apply to the person in charge of any licensed premises to purchase any liquor in the said premises and tender the price of the quantity he shall require for the purpose of analysis not being more than shall be reasonably requisite and if the person in charge of such premises shall refuse to sell the same to him he shall be liable to a penalty not exceeding twenty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

The inspector or sub-inspector purchasing or otherwise obtaining liquor with the intention of submitting the same to analysis shall notify his intention to the seller and shall leave with the seller a bottle thereof sealed or fastened up and shall take with him a bottle similarly sealed and fastened up for submission to analysis.

LOCAL OPTION.

78. (1) The sale of liquor in any village town or ward of a municipality may be totally prohibited therein by a vote to that effect of the majority of the voters or if there be no voters of the white male persons above the age of twenty-one years residing or occupying premises in such village town or ward.

Prohibition of sale of liquor by vote.

(2) On such vote being taken it shall not be lawful for the licensing court to grant any certificate for a licence for the sale of liquor in respect of any premises situated in such village town or ward as the case may be until or unless a majority of such voters or such white male persons as aforesaid by a vote taken in the same manner as such previous vote approve of the withdrawal of the prohibition of the sale of liquor as aforesaid; provided always that a vote of such voters or white male persons under this sub-section shall not be taken until the expiration of three years from the date of any previous vote.

(3) It shall be lawful for the Lieutenant-Governor to make regulations* providing for the manner in which such vote shall be taken and he shall order such vote to be taken on the receipt of a requisition to him to that effect signed by one-tenth of such voters or white male persons as the case may be.

(4) For the purposes of this section the provisions of sub-section (2) of section *thirty-three* shall apply.

(5) This section shall not apply to hotel or railway station liquor licences and shall only take effect in any village town or ward when and as soon as the Lieutenant-Governor by a Proclamation in the *Gazette* has so declared.†

Exclusive sale of liquor by local authority of company or association of persons approved of by the Lieutenant-Governor.

79. (1) The sale of liquor by retail save as hereinafter excepted in any village town or ward of a municipality may be placed under the sole and exclusive control of any local authority or of any company or association of persons formed for the purpose of devoting any profits made from the sale of liquor or such portion thereof as the Lieutenant-Governor may approve of to some public purpose by a vote to that effect of the majority of the voters or if there be none of the white male persons above the age of twenty-one years residing in such village town or ward.

(2) If after such vote has been taken and before it has been revoked as hereinafter provided such local authority company or association with the approval of the Lieutenant-Governor applies for certificates for the grant or renewal of licences for the sale of liquor under this Ordinance at any meeting of the licensing court held after the taking of such vote it shall not be lawful for the said court to grant any certificate for the issue or renewal of a licence for the sale of liquor by retail to any person other than such local authority company or association but it may grant to such local authority company or association certificates for the issue or renewal of any licences to sell liquor under this Ordinance as such local authority company or association may apply for; provided always that the application for certificates for the issue of licences shall be made by such local authority company or association at the first or second meeting of the licensing court held after the taking of such vote as aforesaid; and provided further that such vote as aforesaid may be revoked by a vote of the majority of the voters or white male persons mentioned in sub-section (1) taken in the same manner as such previous vote after the expiration of three years from the date of the taking of

* Regulations were published under Govt. Notices Nos. 1119 of 1906 (*Gazette* 26/10/06 and 2/11/06); 1259 of 1906 (*Gazette*, 7/12/06).

† Sec. 78 has been applied to Gezina and Rietfontein (Pretoria suburbs) by Pr. (Admn.) No. 108 of 1906.

such previous vote or before the expiration of three years if the Lieutenant-Governor on good cause shown shall direct a fresh vote to be taken.

(3) Any such local authority company or association obtaining any licence for the sale of liquor shall be deemed and taken to be the holder of a licence under this Ordinance and shall be subject to the same duties and obligations and liable to the same penalties to which the holder of a similar licence under this Ordinance is subject and liable to save and except the penalty of imprisonment provided that such exception shall not apply to any servant of such local authority company or association contravening the provisions of this Ordinance.

(4) The provisions of sub-sections (3) (4) and (5) of the last preceding section shall *mutatis mutandis* apply to this section.

MISCELLANEOUS.

80. Every licence granted on a certificate from the licensing court may be issued for six or twelve months but shall expire on the thirty-first day of December of the year in which it was issued; in every case however in which application for the renewal of a licence is made such licence shall continue in force until the conclusion of the meeting of the licensing court at which such application is made.

Licences to
expire on
thirty-first
day of
December.

81. Any licensed person being the keeper of any inn or hotel to whom any person shall be indebted for board or lodging or for the keep or expense of any horse or other animal left with or standing at livery in the stables of such licensed person shall be entitled to cause to be sold any property which may have been deposited with him or left in the house he keeps or on the premises belonging thereto subject to the following provisions and conditions:—

Recovery of
debts.

(1) No such property shall be sold unless the same shall have been for the space of one month in the charge or possession of such licensed person without such debt being paid or satisfied.

(2) If the address of the debtor shall be known to such licensed person notice in writing shall be given or sent by post prepaid informing him that unless within ten days from the date of such notice the debt be paid or satisfied the property in question shall be sold.

(3) If the address of the debtor shall not be known notice shall be given by advertisement in some newspaper circulating in the district at least once a week during three weeks of the intended sale.

(4) If after the expiration of the period stated in any such notices respectively the debt shall not be paid the person having custody of any such property may require the messenger of the court of the resident magistrate of the district to sell such property by auction.

(5) The messenger if so required shall make an inventory of such property and deal therewith precisely as if such property had been properly attached by legal process. Such messenger shall lodge with the clerk of the court of the resident

magistrate all documents and accounts which in the case of the execution of a writ he would be required to lodge or such as the resident magistrate may order or require.

(6) The messenger after payment out of the proceeds of any sale of the fees and charges due to him in respect of such sale according to the scale allowed in civil process and upon taxation thereof by the clerk of the court shall pay to the licensed person the amount due to him including the cost of postage on or of advertising any such notice as aforesaid and if there be any surplus such surplus shall be paid to the debtor.

Purchase price of liquor sold on credit not recoverable by law.

82. No person shall recover any sum of money or maintain any suit at law on account of any liquor sold by him on credit to any person for consumption on the premises except in the case of liquor supplied in moderate quantities with meals to any person actually *boarding or** lodging with such first-mentioned person.

How payments for liquor or entertainment to be made.

83. (1) No person shall receive in payment or as a pledge or security for any liquor or entertainment supplied in and from his licensed premises anything except current money cheques on bankers or orders for payment of money.

(2) The person to whom anything pledged in contravention of this section shall belong shall have the same remedy for recovering any such thing or the value thereof as if it had not been pledged.

(3) No person shall receive payment in advance for any liquor to be supplied. Any payment so made in advance may be recovered notwithstanding that any liquor may have been supplied subsequently to such payment.

Property left and not reclaimed.

84. Any property which may have been left in charge of any such licensed person and not reclaimed within six months after notice such as is prescribed by section *eighty-one* has been given be sold by the messenger in the manner directed by that section.

Any person may prosecute.

85. Any person may prosecute any offender for contravening the provisions of this Ordinance; and in any summons or information it shall be sufficient to set forth the offence charged in the words of this Ordinance or in similar words without inserting or negating any exception exemption or qualification but any such exception exemption or qualification may be proved by the defendant.

How penalties to be recovered.

86. For the purposes of recovering any penalty imposed under the provisions of this Ordinance execution may be levied upon all goods and chattels found on the premises upon or in respect of which the offence shall have been committed whether the said goods and chattels be or be not the absolute property of the person upon whom the penalty was imposed. The provisions of this section shall not apply to goods the bona fide property of lodgers and travellers or of persons who may leave or deposit such goods for safe custody or convenience or for the purpose of being worked by any handicraftsman.

* Words in italics inserted by Ord. No. 8 of 1906, sec. 13.

87. (1) If through any accident or omission anything required by this Ordinance to be done is omitted to be done or is not done within the time fixed the Lieutenant-Governor may order all such steps to be taken as may be necessary to rectify any error or omission and may validate anything which may have been irregularly done in matter or form so that the intent and purpose of this Ordinance may have effect. The Lieutenant-Governor may also authorize the holding of a special meeting of any licensing court in the event of any emergency requiring that a special meeting should be held or for the purpose of hearing an application for an hotel liquor licence in respect of premises which were not completed or ready for occupation prior to the last meeting of the licensing court and which are valued at an amount exceeding ten thousand pounds.

Powers of Lieutenant-Governor to rectify omissions and order special meetings of licensing courts.

(2) Any licence granted at any special meeting of the licensing court shall continue in force only until the close of its next usual meeting; and the amount payable on such licence shall be proportionate to the period for which it is in force.

Licences granted at special meetings.

88. The Lieutenant-Governor may from time to time make alter and revoke regulations not being contrary to the provisions of this Ordinance for regulating the proceedings and meetings of licensing courts and the remuneration if any of the members thereof prescribing the forms of licences notices and other documents to be used and generally for the more efficient administration of this Ordinance.

Lieutenant-Governor may make regulations for proceedings of licensing courts.

89. It shall be lawful for the Lieutenant-Governor by Proclamation in the *Gazette* when requested by any local authority to define areas in the neighbourhood of mines manufactories or other centres of labour within which areas all premises in which liquor is sold under a general retail or bottle liquor licence shall be closed at noon on Saturday or such other one day of the week as the Lieutenant-Governor may determine; and any holder of a general retail or bottle liquor licence within any such area who shall sell or dispose of any liquor contrary to the terms of such notice after the hour of noon upon a day so determined shall upon conviction be liable to all the penalties provided for selling dealing in or disposing of intoxicating liquor without a licence.

Lieutenant-Governor may order closing of licensed premises on certain days.

90. The cost incurred by members of any licensing court in connection with legal proceedings instituted against them in their official capacity shall unless the court before which the proceedings are taken order the costs to be borne by the opposite party or by the said members *de bonis propriis* be paid to them out of the Colonial Treasury.

Costs of proceedings.

91. All licences and privileges granted by the Liquor Licensing Commission sitting at Johannesburg and by the Pretoria Licensing Board sitting at Pretoria shall continue in force until the close of the first meeting of the licensing court under this Ordinance and all applications for new licences or the renewal of licences to the said commission or board pending at the date of the taking effect of this Ordinance shall be deemed and taken to be applications for new licences to the licensing court created by this Ordinance and all objections made to such applications shall be taken to be objections made under this Ordinance.

Licences granted by Liquor Commission at Johannesburg and Licensing Board at Pretoria.

Title

92. This Ordinance may be cited for all purposes as the "Liquor Licensing Ordinance 1902" and shall take effect from and after the fifteenth day of November 1902.

FIRST SCHEDULE.

Volksraad Resolution, 27th May, 1875, article *one hundred and forty-eight*.
 Law No. 1 of 1892, sections *three* and *four*.
 Law No. 19 of 1898. The whole.
 Proclamation Transvaal No. 36 of 1901. The whole.
 Proclamation No. 24 of 1900, section *nineteen*.
 Proclamation No. 15 of 1901, section *thirty-seven*.

SECOND SCHEDULE.

Sums payable for or in respect of liquor licences granted, renewed, or transferred under the Liquor Licensing Ordinance, 1902 :

		For twelve months.	For six months.
		£	£ s. d.
1	Wholesale or brewers' liquor licence	50	27 10 0
2	Hotel liquor licence	25	13 10 0
3	Hotel (village or roadside) liquor licence	15	9 0 0
4	Restauraunt or café liquor licence	25	13 10 0
5	Malt liquor licence	25	13 10 0
6	Bottle liquor licence	50	27 10 0
7	General retail liquor licence	100	55 0 0
8	General retail liquor licence (in village of not more than four hundred white male persons over the age of sixteen)	50	27 10 0
9	Club liquor licence	50	27 10 0
10	Railway station liquor licence	40	22 0 0
11	Theatre liquor licence	50	27 10 0
12	Temporary liquor licence	£1 per day	

The holder of a general retail liquor licence may hold an hotel liquor licence or café liquor licence for the same period without the payment of any sum in addition to the amount paid by him in respect of his general retail liquor licence.

THIRD SCHEDULE.

Licences.	Number of Bottle Stores.	Number of Retail Licences.	Number of Retail Licences outside of Towns and Villages.	Total Population per Retail and Bottle Store.
Existing before the holding of court				
Renewed				
Transferred				
New licences				
Refused				

B. D. 9 of 1912

No. 34 of 1902.]

[Promulgated 31st October, 1902.]

ORDINANCE

TO PROVIDE FOR THE DUTIES IMPOSED ON THE CHAIRMAN OF THE MUNICIPALITY OF JOHANNESBURG BEING DISCHARGED BY THE DEPUTY-CHAIRMAN THEREOF.

(Assented to 27th October, 1902.)

WHEREAS it is desirable to provide for the discharge of the duties imposed by law on the chairman of the municipality of Johannesburg until such chairman be appointed or after such appointment on the death resignation illness incapacity or absence of the chairman:

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

*1. All the duties and privileges conferred by law on the chairman of the municipality of Johannesburg shall except where other provision is made be discharged and enjoyed by the deputy-chairman thereof until such chairman is appointed or after he is appointed on the death resignation illness incapacity or absence of the said chairman.

Discharge of duties of chairman of municipality by deputy-chairman.

2. It shall be lawful for the Council of the municipality anything to the contrary in section *nine (a)* of the †Johannesburg Rating Proclamation 1902 notwithstanding to appoint the deputy-chairman of the municipality to be a member of the Committee or Valuation Court constituted under the said section instead of the chairman of the municipality.

Deputy-chairman may be appointed instead of chairman on committee or Valuation Court constituted under section *nine (a)* of Johannesburg Rating Proclamation.

3. This Ordinance may be cited for all purposes as the "Johannesburg Municipality (Duties of Chairman) Ordinance 1902."

Title.

* See Ord. No. 38 of 1903, secs. 8 and 58, giving the elected Town Council of Johannesburg power to elect a Mayor and Deputy-Mayor; and secs. 9 and 58, conferring and imposing powers and duties of Mayor and Deputy-Mayor on Chairman and Deputy-Chairman respectively.

† The Johannesburg Rating Proclamation is now repealed by Ord. No. 43 of 1903, which applies to Johannesburg.

No. 36 of 1902.]

[Promulgated 14th November, 1902.]

ORDINANCE

TO PROVIDE FOR THE APPOINTMENT OF A GOVERNOR AND DEPUTY-GOVERNOR OF PRETORIA PRISON AND TO DEFINE THEIR JURISDICTION AND POWERS.

(Assented to 13th November, 1902.)

WHEREAS it is expedient that provision should be made for the appointment of a Governor and Deputy-Governor of the Prison at Pretoria and to define their jurisdiction and powers:

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. *Repealed by Ordinance No. 6, 1906, section two.*

2. *Repealed by Ordinance No. 20, 1904, section one, and Ordinance No. 6, 1906, section two.*

3. All acts done and all sentences for prison offences at Pretoria Prison imposed by the officer appointed to act as Deputy-Governor of Pretoria Prison under Government Notice No. 419 of 1902 shall be as valid and effectual to all intents and purposes as if such appointment had been made under the powers of this Ordinance.

4. This Ordinance shall be cited for all purposes as the "Pretoria Prison (Appointment of Governor) Ordinance 1902."

Appointment of Governor and Deputy-Governor, Pretoria prison.

Powers, etc., of Governor and Deputy-Governor.

Validation of acts and sentences of officer appointed under Government Notice No. 419 of 1902.

Title.

No. 37 of 1902.]

[Promulgated 14th November, 1902.

***ORDINANCE**

TO MAKE PROVISION FOR THE DISCHARGE OF THE DUTIES OF OFFICERS DURING ILLNESS OR ABSENCE.

(Assented to 13th November, 1902.)

BE IT ENACTED by His Excellency the Lieutenant-Governor with the advice and consent of the Legislative Council as follows:—

It shall be lawful for the Lieutenant-Governor when and so often as by reason of the absence or incapacity through sickness or other cause of any officer in the service of the Government of this Colony it shall appear to him necessary or expedient to do so to appoint some other fit and proper person to act as and in the place of such officer during the absence or the continuance of such incapacity and to notify such appointment in the *Gazette*; whereupon every right duty power and function conferred or imposed by law upon such officer shall and may be exercised and performed by such person as fully and effectually as the same may be exercised by such officer himself.

Lieutenant-Governor to appoint officers to act in the place of others in certain cases.

* The provisions of this Ordinance were applied to field cornets by Act No. 34 of 1907, sec. 8.

No. 38 of 1902.] [Promulgated 21st November, 1902.]

*ORDINANCE

TO WITHDRAW MARTIAL LAW AND TO MAKE SPECIAL PROVISION FOR THE MAINTENANCE OF GOOD ORDER AND THE PUBLIC SAFETY.

(Assented to 15th November, 1902.)

WHEREAS it is desirable to withdraw Martial Law from this Colony and to indemnify acts matters and things in good faith advised commanded ordered directed or done while Martial Law was in force:

And whereas it is desirable in view of the withdrawal of Martial Law to make special provision for the maintenance of good order and government and the public safety of this Colony during such time as circumstances may require:

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Definition of terms.

1. The following expressions in inverted commas shall have the meaning placed opposite to them:—

“Constabulary” shall mean the South African Constabulary.

“Police officer” shall mean any officer of the Constabulary or Town Police not under the rank of captain or inspector respectively.

Withdrawal of Martial Law.

2. (1) From and after the date of the taking effect of this Ordinance Martial Law shall be and is hereby withdrawn from this Colony and all Proclamations and regulations issued under the authority of Martial Law and all Proclamations signed by the Military Governor of Pretoria or Johannesburg shall become *ipso facto* of no force or effect.

Repeal of laws.

(2) Sub-sections (1) and (2) of the proviso to section *sixteen* of the Administration of Justice Proclamation 1902 shall be and are hereby repealed.

Governor may withdraw any district from operation of Part II of this Ordinance.

3. It shall be lawful for the Governor at any time by Proclamation in the *Gazette* to withdraw any district of this Colony or any portion of a district from the operation of Part II of this Ordinance or any portion thereof; such Proclamation shall also be published in some newspaper circulating in the district and printed copies thereof shall be affixed to the door of the court-house of the resident magistrate and of every police station in the district; provided always that the Governor may at any time thereafter proclaim that the whole or any portion of Part II of this Ordinance shall be in force in any district or portion thereof from which it may have been withdrawn; notice of such Proclamation to be given in like manner as is provided in this section in respect of a Proclamation for withdrawal.

* As to the validity of permits issued to Asiatics under this Ord. for a limited time only, see Act No. 2 of 1907, sec. 17 (3).

PART I.

4. No action indictment or legal proceeding whatsoever shall be brought or instituted in any of the courts of this Colony against His Excellency the Governor of the Transvaal or His Excellency the Lieutenant-Governor of the Transvaal or the Officer for the time being Commanding His Majesty's Forces in this Colony or against any person or persons acting under them or any of them respectively in any command or capacity civil or military for or on account or in respect of any acts matters and things whatsoever in good faith advised commanded ordered directed or done for the suppression of hostilities or for the maintenance of good order and government or for the public safety of this Colony between the date of the commencement of a state of war between His Majesty's Government and the late Governments of the South African Republic and the Orange Free State and the date of the taking effect of this Ordinance; and any such action indictment or other proceeding which may have been commenced at the date of the taking effect of this Ordinance shall be discharged and become and be made void.

Indemnity for certain acts.

5. Every such person aforesaid by whom any such act matter or thing shall have been advised commanded ordered directed or done for the purposes aforesaid shall be freed acquitted discharged released and indemnified against all and every person and persons whomsoever in respect thereof.

Certain persons indemnified.

6. Every such act matter or thing referred to in the preceding sections shall be presumed to have been advised commanded ordered directed or done as the case may be in good faith until the contrary shall be proved by the party complaining.

Presumption of good faith.

7. The several sentences pronounced by military courts or by courts established by proper military authority and holden in this Colony during the existence of Martial Law upon persons tried by such courts for offences against the law of this Colony as well as for contraventions of Martial Law regulations are hereby confirmed; and all such persons confined in any prisons or other legal places of confinement in this Colony under or by virtue of such sentences shall continue liable to be confined there or elsewhere as the Lieutenant-Governor may direct until the expiration of the sentences respectively passed upon them or until their discharge by lawful authority; and such sentences shall be deemed to be sentences passed by duly and legally constituted courts of this Colony and shall be carried out or otherwise dealt with in the same manner as the sentences of duly constituted courts of law of this Colony.

Sentences pronounced by military courts confirmed.

8. All persons who have been in good faith and under proper military authority arrested for high treason or other crime in this Colony during the existence of Martial Law and all persons who have been similarly committed to gaol and are there detained to await their trial for high treason or other

Persons arrested for high treason under Martial Law to be deemed to have been lawfully arrested.

crime shall be deemed to have been lawfully arrested committed to and detained in gaol in the same manner and to the same extent as if they had been arrested and committed to gaol on warrants issued by persons authorized by law to issue them.

Recognizances taken during existence of Martial Law to be of full force and effect.

9. Every recognizance taken during the existence of Martial Law upon which a person accused of high treason or other crime has been admitted to bail shall be and is hereby declared to be of full force and effect.

PART II.

SPECIAL PROVISIONS FOR PUBLIC SAFETY.

When person may be arrested without warrant.

10. It shall be lawful for any magistrate assistant magistrate or police officer in any district to arrest or cause to be arrested without warrant any person in such district on reasonable suspicion of his having committed treason or any of the offences mentioned in section *eighteen* of this Ordinance and to lodge such person in any gaol in the said district.

Gaoler bound to receive in custody persons arrested under section *ten*.

11. Upon the written order of such magistrate assistant magistrate or police officer as aforesaid the gaoler of the said district shall be bound to receive and detain in custody in the gaol thereof any such person arrested as aforesaid for such time as is specified in the said order or if no time is specified therein until the said gaoler receives an order from the Attorney-General or official on whose order the said person is detained for such person's release notwithstanding that no charge is preferred against such person either at the time of his arrest or of his reception into gaol; provided that every such person shall be entitled to his discharge from gaol or custody unless within twenty-one days after such imprisonment criminal proceedings shall be commenced against him.

Magistrate to send statement in writing to Attorney-General containing full name of person arrested and all particulars relating to arrest.

12. As soon as a person is received into custody under the last preceding section the magistrate shall forthwith submit to the Attorney-General a statement in writing containing the full name address and occupation of such person as far as can be ascertained and also a copy of the order on which such person was received into gaol together with all the information in his possession on which such order was issued.

Suspected person may be arrested in any other district to which he has removed.

13. Any person liable to arrest under section *ten* who shall have removed from any district in which that section is in force may be arrested in any other district; and the magistrate of such last-mentioned district or any police officer therein shall on the application of the magistrate of the first-mentioned district cause such person to be arrested without warrant and detained in the gaol of the district in which he was arrested or removed to the gaol of the district from which such application as aforesaid was made. Upon such arrest the provisions of sections *eleven* and *twelve* shall *mutatis mutandis* apply.

14. Should any person arrested under sections *ten* or *thirteen* apply to the Supreme Court Witwatersrand High Court or to any judge of the Supreme Court for his discharge from custody before the expiration of the twenty-one days mentioned in section *eleven* it shall not be competent for any such court or judge to grant such discharge if satisfied that reasonable grounds exist for suspecting that the said person has committed treason or any of the offences mentioned in section *eighteen* of this Ordinance.

Person arrested may apply to Supreme Court or High Court for his discharge.

15. It shall be lawful for the resident magistrate or assistant resident magistrate in any district or for any police officer serving therein on any information that there is reasonable cause to suspect that any person within such district is in the possession of any document written or printed of a seditious or treasonable character to search or cause to be searched any land building or premises of any kind whatever situated in such district or any wagon cart or other vehicle on or in which there are reasonable grounds for suspecting that such document may be found and to seize any such document as aforesaid without any warrant being issued or obtained for such search or seizure.

Search of buildings in which treasonable documents are expected to be.

16. Any person hindering or obstructing any police constable or other authorized person while engaged in any search under the provisions of this Ordinance shall be liable on conviction to be imprisoned with or without hard labour for a period not exceeding one year or to be fined a sum not exceeding one hundred pounds or to both such fine and imprisonment.

Penalty for obstructing police constable engaged in searching.

17. It shall be lawful for the official in charge of any post office to intercept any letter or other document or parcel sent through the post which he has reasonable grounds to suspect contains treasonable or seditious matter; such letter document or parcel shall be forthwith sent by him to the resident magistrate of the district together with a statement in writing of the grounds of suspicion and shall be opened by such magistrate if satisfied that reasonable grounds of suspicion do exist as aforesaid; and in case such letter document or parcel be found on being opened to contain treasonable seditious or other criminal matter it shall be forwarded by the resident magistrate to the Attorney-General to take such action thereon as he may deem advisable; and in case such letter document or parcel shall be found not to contain treasonable seditious or other criminal matter it shall after being endorsed by the said magistrate be forwarded to its destination.

Stoppage of letters reasonably suspected of containing treasonable or seditious matter.

18. Any one who speaks seditious words or does seditious acts or publishes a seditious libel or is party to a seditious conspiracy shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding five years or if he has previously been convicted of any offence under this section to imprisonment with or without hard labour for a period not exceeding seven years.

Penalty for seditious acts writing and speeches.

Seditious words are words expressive of a seditious intention.

Seditious acts are acts done with a seditious intention.

A seditious libel is a libel expressive of a seditious intention.

A seditious conspiracy is an agreement between two or more persons to carry into execution a seditious intention.

A seditious intention is an intention

(1) to bring His Majesty or the Governor or Lieutenant-Governor of the Transvaal in person into hatred or contempt; or

(2) to excite disaffection against His Majesty or the Governor or Lieutenant-Governor in person or the Government and Constitution of the United Kingdom or of the Transvaal as by law established or the administration of justice therein; or

(3) to incite His Majesty's subjects to attempt to procure otherwise than by lawful means the alteration of any matter in the Transvaal by law established; or

(4) to incite any person to commit any crime in disturbance of the public peace; or

(5) to raise discontent and disaffection amongst His Majesty's subjects; or

(6) to promote feelings of ill-will and hostility between different classes of His Majesty's subjects; provided that no one shall be deemed to have a seditious intention only because he intends in good faith

(a) to show that His Majesty or the Governor or Lieutenant-Governor has been misled or mistaken in his measures; or

(b) to point out errors or defects in the Government or Constitution of the United Kingdom or the Transvaal as by law established or in the administration of justice therein with a view to the reformation of such alleged errors or defects; or to urge His Majesty's subjects to attempt to procure by lawful means the alteration of any matter in the Transvaal by law established.

19-24 (inclusive). *Repealed by Ordinance No. 5, 1903, section one.*

Lieutenant-Governor may make regulations for better carrying out objects of Ordinance.

25. It shall be lawful for the Lieutenant-Governor to make regulations for all or any of the following purposes and to provide penalties for any breach thereof not exceeding a fine of fifty pounds or imprisonment with hard labour for a period not exceeding three months or both such fine and imprisonment—

(a) for the more effectual carrying out of the provisions of this Ordinance;

(b) for preventing the wilful or reckless spreading of false intelligence calculated to create panic or alarm;

(c) for prohibiting the holding of meetings at which there is reasonable suspicion that seditious speeches will be made;

(d) for prohibiting the introduction into this Colony or circulation therein of any printed matter of a treasonable or seditious character.

Any regulations made under this section may be for any one or more districts but shall only be of force after publication in the *Gazette*.

26. Nothing in this Ordinance contained shall be deemed or taken to interfere with or to limit the power of the Governor to proclaim Martial Law throughout this Colony or in any district or districts thereof.

Nothing in Ordinance to prevent Proclamation of Martial Law when necessary.

27. This Ordinance may be cited for all purposes as the Title.
“Indemnity and Peace Preservation Ordinance 1902.”

No. 39 of 1902.]

[Promulgated 21st November, 1902.]

ORDINANCE

TO PROVIDE FOR THE CONTINUANCE OF CONCENTRATION CAMPS
AND THE REMOVAL OF MILITARY STRUCTURES ON PRIVATE
LANDS.

(Assented to 15th November, 1902.)

WHEREAS it is necessary to provide for the continuance of
concentration camps and the removal of certain military struc-
tures on private lands:

Be it enacted by the Lieutenant-Governor of the Trans-
vaal with the advice and consent of the Legislative Council
thereof as follows:—

PART I.

CONCENTRATION CAMPS.

Concentra-
tion camps
may be
maintained
for six
months after
taking effect
of Ordinance.

1. It shall and may be lawful for the Lieutenant-Governor during such period as he may deem advisable not exceeding six months from the promulgation of this Ordinance to maintain burgher and native concentration camps and all tents buildings and structures of any kind whatsoever required therefor at such places on private or municipal land as are at the taking effect of this Ordinance occupied for the purposes of such camps as aforesaid.

Right of
access to such
camps to be
by existing
roads.

2. A right of access to such camps by the existing roads or routes on any such private land shall be and is hereby granted during the period aforesaid to all persons who are duly authorized to reside in or visit the said camps.

Compensa-
tion to be
paid to owner
of land for
use thereof
for concen-
tration
camps.

3. Compensation shall be paid by the Lieutenant-Governor to the owner or lessee of the land on which any such camp is situated in respect of the said occupation during the period aforesaid; the amount of compensation shall be such sum as shall have been or may hereafter be agreed upon between the parties concerned and failing such agreement the amount shall be determined by arbitration in the manner hereinafter provided.

Camps to be
removed on
expiration of
period men-
tioned in
section one.

4. All tents buildings and structures placed or erected upon any such private or municipal land shall be removed within the said period of six months and the owner or lessee of the land shall be entitled to receive compensation in respect of occupation or damage resulting from failure to remove such tents buildings and structures within the period limited as aforesaid.

PART II.

MILITARY STRUCTURES.

Removal of
buildings
erected by
military
during war.

5. All buildings and structures (whether of stone wood iron brick or earth) and all wires and obstacles erected or placed on private or municipal property by the military

*Concentration Camps and
Military Structures.*

Ord. No. 39.]

[A.D. 1902.

authorities during the existence of hostilities and for the purposes of defence or carrying on of military operations may be removed by the military authorities or any person duly authorized by them within a reasonable time not to exceed six months from the date of the passing of this Ordinance.

6. No compensation shall be payable by the General Officer Commanding His Majesty's Forces in the Colony in respect of the use and occupation of lands by buildings or structures during the period limited in the preceding section of this Ordinance.

No compensation payable for occupation of land for buildings erected by military authorities for a certain period.

7. In the event of failure to remove such buildings and structures within the period limited as aforesaid the owners or occupiers of such private or municipal lands shall be entitled to remove such buildings and structures.

Owner of land entitled to remove buildings not removed within certain period.

8. For the purpose of removing such buildings structures wires and obstacles the military authorities or any purchasers from them of any such buildings structures or materials thereof or of any such wires or obstacles shall have the right to enter by the existing roads if any or if there are no roads by a route reasonably accessible to be pointed out by the owner or occupier upon the lands on which they are placed.

Right of entry on land for purpose of removing buildings.

9. The owner or occupier of a farm may at any time remove wire fencing or entanglements which constitute impediments in the way of his carrying on agriculture or domestic pursuits or in the way of free passage to and within his farm provided that in such removal reasonable care shall be exercised and adequate provision shall be made for the storing and custody of the materials removed; and that all removals shall be undertaken only under the supervision of a person or persons appointed without unreasonable delay to supervise any such removal by the resident magistrate of the district; and that reasonable notice of any intended removal is given either verbally or by letter to such resident magistrate at his office.

Owner of land may remove any fencing erected by military if fencing is an impediment to his farming operations.

10. In all matters which are directed by this Ordinance to be determined by arbitration one arbitrator shall be appointed by the Lieutenant-Governor and one by the owner or lessee of the land; the said arbitrators shall before proceeding to act appoint an umpire; the decision of the arbitrators or in case of their disagreement of the umpire shall be final and binding on all parties to the reference. The provisions of the Expropriation of Lands and Arbitration Clauses Proclamation 1902 shall in all other respects apply to such arbitration.

Procedure by arbitration.

11. This Ordinance may be cited as the "Concentration Camps and Military Structures Ordinance 1902."

Title.

No. 42 of 1902.]

[Promulgated 28th November, 1902.]

ORDINANCE

TO MAKE PROVISION AS TO INTEREST ON MORTGAGE BONDS
PASSED BEFORE THE 25TH DAY OF OCTOBER 1899.

(Assented to 27th November, 1902.)

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Bonds to which this Ordinance applies.

1. This Ordinance shall apply to all mortgage bonds passed before the twenty-fifth October 1899 upon which the interest for any period between the date of the Proclamation of Martial Law and the thirty-first May 1902 is still due and to no others.

Interest is not deemed to be due within the meaning of this section where any arrangement or compromise has been entered into since the twenty-fifth October 1899 between the parties with regard to the payment thereof.

Actions on bonds postponed.

2. No action shall be brought or maintained in any of the courts of this Colony for the capital sum secured by any such mortgage bond or the interest mentioned in the next succeeding section before the first day of January 1904: provided that nothing herein contained shall prevent an action being brought for the capital sum with all interest due on such bond where the interest for any period prior to the eleventh October 1899 or subsequent to the thirty-first May 1902 has not been paid in terms of the bond.

Bondholder to have priority in respect of deferred interest.

3. The legal holder of any such bond shall have the same priority in respect of payment of the interest due on such bond from the eleventh October 1899 to the thirty-first May 1902 as he has in respect of the capital sum secured by the bond.

Interest to be payable on deferred interest.

4. Interest at the rate and in the manner provided in the bond shall be payable on the interest mentioned in section three from the first day of June 1902 to the date of payment of such interest.

Ordinance not to apply in case of sequestration.

5. Nothing in this Ordinance shall affect the distribution of the assets of any mortgagor whose estate may be sequestrated.

Title.

6. This Ordinance may be cited as the "Mortgage Bonds Ordinance 1902."

No. 43 of 1902.]

[Promulgated 5th December, 1902.]

ORDINANCE

TO PROVIDE FOR THE CARRYING OF NIGHT PASSES BY NATIVES.
(Assented to 29th November, 1902.)

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance shall apply to

(a) the area within the local limits of the jurisdiction of every Town Council or Health Board; Application.

*(b) every area within which the Lieutenant-Governor may by Proclamation published in the *Gazette* declare it to be in force.

2. In this Ordinance "native" shall include every person belonging to any of the aboriginal races or tribes of Africa south of the Equator and every person one of whose parents belongs to any such race or tribe as aforesaid. Definition of "native."

†3. (1) Any native found in any street public place or thoroughfare within any area to which this Ordinance applies between the hours of nine p.m. and four a.m. without a written pass or certificate from Natives not to be out within certain hours without special passes.

§(a) his employer or

§(b) some person duly authorized by the Town Council or Health Board or in areas where there is no such Town Council or Health Board some person authorized by the Lieutenant-Governor

shall be liable to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

‡(2) Any person who not being the bona fide employer of any native or a person authorized under this section who may sign or issue any pass or certificate to such native shall be liable upon conviction to a fine not exceeding one hundred pounds or to imprisonment with or without hard labour for a period not exceeding twelve months.

4. This Ordinance shall not apply to any person relieved from the operation of the Pass Law by Proclamation (Transvaal) No. 35 of 1901 or Ordinance No. 28 of 1902. Exception.

5. Nothing in this Ordinance contained shall prevent the residents in any location from being in the streets public places or thoroughfares in such location between the hours aforesaid. Not to apply to locations.

6. This Ordinance may be cited as "The Natives' Night Passes Ordinance 1902." Title.

* This Ordinance has been applied to the following areas:—Potgieter, Komati-poort, Vlakkfontein, Ottoshoop, Bloemhof, Elandsheuvel, Hartebestfontein, and Pilgrims Rest by Pr. (Admn.) No. 2 of 1904; Louis Trichardt by Pr. (Admn.) No. 38 of 1905; the farm Groenkloof, town lands of Pretoria then not within the municipal area, area of Pretoria Suburbs Health Committee, Pretoria North and Wolmer Townships by Pr. (Admn.) No. 35 of 1906; Onderstepoort No. 496, Pretoria, and Wonderboom No. 311, Pretoria, by Pr. (Admn.) No. 114 of 1908; portion Doornhoek No. 241, Carolina, by Pr. (Admn.) No. 89 of 1909.

† As to persons who may issue passes see Prs. (Admn.) No. 35 of 1906 and No. 114 of 1908.

‡ This sub-section is given as (c) in the *Gazette*, which is obviously an error.

§ As in *Gazette*.

No. 45 of 1902.]

[Promulgated 19th December, 1902.]

*ORDINANCE

TO PROVIDE FOR LAND SETTLEMENT IN THE COLONY.

(Assented to 18th December, 1902.)

WHEREAS it is expedient that provision should be made to enable agriculturists and other persons to become occupiers of land in this Colony:

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

PRELIMINARY.

Interpreta-
tion.

1. In this Ordinance if not inconsistent with the context “this Ordinance” includes any regulations as hereinafter defined;
 - “regulation” means a regulation framed by the Lieutenant-Governor under this Ordinance;
 - “licence” means the title under which the purchaser of a holding occupies such holding until he has acquired a Crown grant;
 - “forfeiture” or “forfeited” means forfeiture or forfeited to the Crown;
 - “district” means a land district as defined by the Lieutenant-Governor under the provisions of the Crown Land Disposal Ordinance 1902;
 - “Commissioner” means the Commissioner of Lands appointed under the Crown Land Disposal Ordinance 1902;
 - “Land Board” or “board” when used alone means the board appointed by the Lieutenant-Governor to advise the Commissioner of Lands;
 - “District Land Board” means the board or any of the boards appointed to advise the District Commissioner;
 - “settler” means a person occupying land under this Ordinance;
 - “residence” means a habitable house approved by the District Commissioner;
 - “substantial improvements of a permanent character” means and includes reclamation from swamps clearing of bush or scrub cultivation planting with trees or live hedges fencing draining making roads sinking wells making dams or tanks constructing water-furrows constructing dipping tanks making embankments or protecting works of any kind or in any way improving the character carrying capacity

* See Ord. No. 57 of 1903, secs. 9 and 17; Letters Patent, 1906, sec. LII; Act No. 37 of 1907; Act No. 26 of 1909, sec. 8.

or fertility of the soil or the erection of any building or such other works as may be approved by the District Commissioner;

“fence” means a substantial fence of any one or more of the classes of fencing prescribed by regulation for the district or holding on which such fence is situated.

2. †(1) The Lieutenant-Governor may by Proclamation set apart for the purpose of this Ordinance such portions of Crown land as defined in the Crown Land Disposal Ordinance 1902‡ as he may deem suitable. He may also at any time before such land has been sold or leased or after it has reverted to the Government whether by forfeiture or otherwise withdraw any such land from the operation of this Ordinance and thereupon such land shall become subject to the Crown Land Disposal Ordinance 1902. Land for settlement.

(2) The Lieutenant-Governor in Council may also acquire land for the purposes of this Ordinance either at public auction or by private contract.

(3) Such land shall before being offered for sale or lease as hereinafter provided be divided into holdings surveyed and valued. The value shall include any improvements there may be on the land at the time of the valuation together with the costs of such valuation survey and registration fees.

APPLICATION AND ALLOTMENT.

3. The Commissioner may from time to time by notice in the *Gazette* offer for sale or lease in the manner and on the terms hereinafter set forth any holdings referred to in the last preceding section. Commissioner may offer Crown land for settlement.

4. Such notice shall set forth the situation extent boundaries and description of the holdings so offered and shall specify the price or rent at which such holdings shall be open for purchase or lease and shall fix a day at least three months subsequent to the first publication of the notice as the last day for receiving applications for such holdings. Notice shall set out particulars.

* 5. Every application for such holdings shall be made to the Commissioner in writing in the form prescribed by regulation and shall have attached thereto a declaration by the applicant in the form prescribed by regulation. Mode of application.

6. In the event of any of the statements contained in the said declaration being false to the knowledge of the applicant in any material particular he shall in addition to any penalties to which he may be otherwise liable forfeit all right to the land applied for as well as all moneys paid in respect thereof and all improvements thereon: provided that no forfeiture shall take place under this section except within three years from the date on which the false declaration was made. Forfeiture for false declaration.

† As to areas set apart for settlement purposes see Prs. (Admn.) No. 14 of 1906, 11 of 1907 (White River Settlement); Prs. (Admn.) No. 52 of 1906, 12 of 1907, and 76 of 1907 (Lots Haenertsburg); see also Ord. No. 2 of 1905, secs. 2 and 3.

‡ Repealed by Ord. No. 57 of 1903.

* For form of application see Govt. Notice No. 1279 of 1903 (*Gazette*, 6th November, 1903, p. 1264).

Deposit by applicant.

7. Every applicant at the time of making application shall deposit with the Commissioner or with some other person appointed by him a sum equal to one per centum of the price of such holding and in the event of his neglecting or refusing to take up on allotment the holding so applied for the said sum shall be forfeited; provided that in the case of the holding applied for not being allotted to him the amount of his deposit shall be returned to him forthwith.

When the holding applied for has been allotted to the applicant the amount of his deposit shall be applied to the payment of the first half-year's rent or instalment of the purchase money as the case may be.

Conditions of application.

8. No application shall be entertained by the Commissioner unless the applicant

- (a) is at least 18 years of age;
- (b) has a competent knowledge of farming;
- (c) intends to occupy bona fide the land applied for;
- (d) is of good character.

All land applied for must be for applicant's exclusive use.

9. (1) No person shall by himself or through any other person for him be entitled to acquire obtain or hold either by original application or by transfer or otherwise in any manner whatsoever any land under this Ordinance unless it be exclusively for his own use and benefit.

(2) No person who at the time of making his application has made any arrangement or agreement to permit any other person to acquire by purchase or otherwise the holding in respect of which his application is made or any part thereof or the applicant's interest therein shall become a licensee or lessee under this Ordinance.

(3) Any person who knowingly commits or incites instigates or employs any other person to commit any breach of the provisions of this Ordinance by obtaining lands not exclusively for his own use and benefit shall be liable to a penalty not exceeding five hundred pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding one year.

No applicant to be allotted more than one holding.

10. No applicant shall be allotted more than one holding under this Ordinance.

Appearance of applicants before Land Board.

11. Before allotment the Commissioner may call on any applicant to appear before the Land Board and give evidence on oath or in any form allowed by law as to his compliance with the requirements of sections *eight* and *nine* and also as to his general ability to properly cultivate the land and fulfil the conditions of the licence or lease.

Any District Commissioner or member of the Land Board or any District Land Board may for the purposes of this Ordinance or any regulations made thereunder administer an oath or take a declaration or affirmation.

Joint application and applications for adjoining holdings.

12. Holdings shall as a rule be allotted to individuals only but in special cases it shall be competent for not more than five persons qualified as in section *eight* provided to apply

jointly for a holding and for the Commissioner to deal with such application in manner provided in the next succeeding section as if the applicants were one person. Any holding which they may receive shall be held by them jointly subject to such special conditions as the Commissioner may impose.

Any two persons may apply for and obtain two adjoining holdings to be allotted in manner prescribed by regulation.

13. (1) The same applicant may make application for more holdings than one.

Mode of
allotment.

(2) When an* applicant has made application for more than one holding one deposit which shall be for the holding of the highest value shall cover all applications. If there be in the opinion of the Commissioner only one suitable applicant for any holding he shall receive that holding and thereupon any application which he may have made for any other holding shall be considered withdrawn.

(3) If any person be the only suitable applicant for more than one holding he may select any one of such holdings and thereupon any application which he may have made for any other holding shall be considered withdrawn.

(4) When there are more suitable applicants than one for the same holding the selection of the person to whom it is to be allotted shall be subject to the provisions of the next succeeding sub-sections be determined by lot.

(5) When there are two or more applicants for the same holding of equal suitability preference shall be given to such of the applicants (if any) who shall have served as members of the South African Constabulary or in any of His Majesty's Forces for a period in either case of not less than twelve months.

(6) If a person is one of several suitable applicants for more than one holding he shall be entitled to the holding for which he is first selected and thereupon his applications shall be considered withdrawn as to all the other holdings.

(7) Notwithstanding anything herein contained the Commissioner has subject to the approval of the Lieutenant-Governor full discretion in selecting the applicant whom he may consider most suitable or in rejecting all applications.

(8) It shall be lawful for the Lieutenant-Governor to make special arrangement with settlers to whom temporary occupation or employment has been granted previous to the passing of this Ordinance with regard to the allotment of the holdings on which they have been engaged or of any other suitable holdings.

LICENCES AND LEASES.

14. Holdings shall be allotted either (a) under licence or (b) under lease.

Holdings to
be allotted by
licence or
lease.

(a) The purchase money payable under licence shall be payable by sixty half-yearly instalments at the rate set forth in the schedule annexed hereto but it shall be competent for a licensee to pay any number of instalments

* As in *Gazette*; in Ord., 1902, the word "one" is here used.

in advance and at the expiration of ten years from the date of licence to obtain a Crown grant subject to the provisions of section *forty-one*.

|| (b) Leases shall be for five years at such graduated rent as may be fixed by the Commissioner and published in the *Gazette* not exceeding an average of five per centum per annum on the price of the holding as notified in the *Gazette*.

Every licence or lease shall commence from the first day of January or the first day of July whichever may be next after the date of entry upon possession.

Lessee may
obtain
licence.

*†15. A settler to whom a lease has been granted and who has fulfilled all the terms and conditions thereof to the satisfaction of the Commissioner shall be entitled to obtain a licence for his holding at the price and on the terms and conditions originally notified in the *Gazette* and prescribed in this Ordinance by giving not less than twelve months' notice to the Commissioner to that effect expiring at or before the termination of his lease or of any extension thereof that may be granted under section *sixteen* and he may either

(a) pay the instalments mentioned in the schedule annexed hereto accruing due from the date of the lease less the amount paid as rent; in which case he shall be entitled to receive a licence to occupy bearing the same date as his lease and he shall be in all respects in the same position as if he had originally been a licensee instead of a lessee; or

(b) commence paying the instalments mentioned in the schedule annexed hereto from the date on which the lease expires in which case his licence shall be dated the next day succeeding that on which the lease expired.

Extension of
lease.

‡ 16. (1) The Commissioner may on good cause shown and on receiving not less than twelve months' notice prior to the termination of a lease grant an extension thereof for a period not exceeding two years at a rent not exceeding five per centum per annum on the price of the holding as notified in the *Gazette*.

(2) The lessee who has applied for an extension of his lease must within one month after the decision of the Commissioner has been communicated to him notify to the said Commissioner whether or not he accepts the extension offered.

Revaluation.

§ 17. (1) Should the lessee be desirous of purchasing his holding but consider the price notified in the *Gazette* too high he may not less than twelve months before the termination of his lease or of any extension thereof apply for and the Commissioner may grant a revaluation thereof and may allot the holding to the applicant at such revaluation. At the time of such application the lessee must lodge with the Commissioner

|| For form of lease see Government Notice No. 1278 of 1903 (*Gazette*, 6th Nov., 1903, p. 1161).

* For form of licence see Govt. Notice No. 679 of 1906 (*Gazette* 13/7/06).

† See however Act No. 37 of 1907, sec. 6 (1).

‡ See however Act No. 37 of 1907, sec. 6 (2).

§ See however Act No. 37 of 1907, sec. 6 (3).

the estimated cost of the revaluation and must within one month after such revaluation is communicated to him notify to the Commissioner whether or not he wishes to purchase the holding at such revaluation.

(2) The Commissioner shall not be bound to grant a revaluation but may in case the lessee refuses to purchase at the price notified in the *Gazette* order that the holding be again offered for allotment in the ordinary way in which case the sum deposited by the settler to cover the cost of revaluation shall be returned to him forthwith or set off against any sum due by him to the Government.

(3) Every revaluation shall be settled after inquiry by the District Commissioner in open court.

18. Every extension of lease and revaluation with the amount of the rent and revaluation shall after determination be notified in the *Gazette*.

19. Before entering upon possession of any holding the settler shall obtain from the Commissioner a licence or lease of his holding as the case may be.

20. Every such licence and lease shall be subject to the conditions in this Ordinance contained and may contain such special servitudes and such other conditions not inconsistent with the provisions of this Ordinance as the Lieutenant-Governor may approve.

21. (1) All roads thoroughfares and public outspans being or existing on the holding held under any licence or lease shall remain free and uninterrupted unless the same be closed or altered by competent authority.

(2) The Lieutenant-Governor shall at all times have the right to make roads railways dams watercourses and drains and to conduct telegraphs and telephones through and over the holdings for the benefit of the public and to take materials for these purposes also to establish convenient outspans for the use of travellers on payment to the licensee or lessee of such sum of money as compensation for improvements as may be mutually agreed to between the parties concerned or failing such agreement as may be determined by arbitration in manner provided by the Expropriation of Lands and Arbitration Clauses Proclamation 1902; provided that the arbitrators may set off against the loss or damage caused to the licensee or lessee the benefit instant or prospective which he shall or may derive in consequence of the construction of any of the said works.

22. (1) All rights to minerals and mineral products on or under any Crown land alienated under this Ordinance shall be reserved to the Crown unless other special provision is made in any licence or lease.

(2) Where no special provision is made the Lieutenant-Governor shall have the right

(a) to deal with all minerals on or under the land so alienated as if the licence or lease had not been granted: provided that any person who causes any damage to a licensee or lessee by the exercise of rights granted to him

Notification of extension of lease or revaluation. Licence or lease to be obtained before entry. Conditions of licences and leases.

Reservation of roads etc.

Reservation of minerals.

under any law relating to minerals shall be liable for such damage to the licensee or lessee; and provided further that no licence granted under any law relating to minerals shall entitle the holder thereof to prospect or mine upon any cultivated land plantation or homestead or within two hundred yards of any building;

(b) to resume for mining purposes the whole or any portion of any land so alienated.

(3) The Lieutenant-Governor shall have the right to resume for public purposes the whole or any portion of any land alienated under this Ordinance.

(4) On the proclamation as a public digging of any land alienated under this Ordinance or on the resumption of such land for mining or public purposes under this section such compensation shall be paid to the licensee or lessee as may be agreed upon or in default of agreement as may be determined by arbitration in manner provided by the Expropriation of Lands and Arbitration Clauses Proclamation 1902.

(5) Notwithstanding anything contained in this section the licensee or lessee of any holding shall be entitled to such minerals and mineral products other than precious metals and precious stones as may be required for his domestic use and for the efficient occupation of his holding.

Date of
payment of
rent or
instalments.

23. The licensee or lessee shall pay in advance the half-yearly instalments of the purchase price or his rent as the case may be on the first day of January and first day of July in each year and on the same date he shall pay the interest and instalments of principal due in respect of any advances made to him under section *forty-two*.

Residence.

*24. (1) The licensee or lessee shall commence to reside on the holding described in his licence or lease within six months after allotment and shall save as is provided in the next succeeding sub-sections continue to reside on his holding and make it his bona fide residence during the whole term of his licence or lease.

(2) Every settler shall reside on his holding for a period of not less than eight months in all in each year and shall give notice in writing to the District Commissioner of his intention to be absent from his holding for any period exceeding fourteen days.

(3) When pursuant to the provisions of this Ordinance or pursuant to the conditions of any licence or lease thereunder it is necessary for the settler to reside on his holding for any period or periods then upon such settler proving to the satisfaction of the Commissioner that the home of the family of such settler is situate upon such holding the Commissioner may give his consent in writing that for the purpose of such licence or lease and for the period to be specified in such consent (unless the Commissioner in writing at any time before the expiration of such period cancels such consent) residence by the wife or any specified child over eighteen

* See however Ord. No. 57 of 1903, sec. 17.

years of age of the said settler or if the said settler has no wife or has no child over the said age residence by the father or mother of the said settler if dependent upon him for support shall be deemed and taken to be residence by the said settler within the meaning of this Ordinance or of any licence or lease thereunder. This sub-section shall have no force or effect except as to determining the person by whom the condition of residence under any licence or lease may be fulfilled.

(4) If a number of settlers embracing at least five families desire to settle together in or to establish a village adjacent to their holdings for religious educational industrial or similar purposes the Lieutenant-Governor may in his discretion vary or dispense with the requirements as to residence upon their holdings and substitute residence in such village subject to such conditions as he may prescribe.

(5) On the marriage of any unmarried woman or widow who is the licensee or lessee of a holding the Commissioner subject to such terms and conditions as to him shall seem fit may if such licence or lease was issued at least one year prior to such marriage discharge or relieve such licensee or lessee from the necessity of complying with the condition contained in such licence or lease requiring the licensee or lessee to occupy such holding for any term specified in such licence or lease.

25. (1) The licensee or lessee shall during the term of his licence or lease occupy and cultivate his holding in a proper and husbandlike manner. Good husbandry.

(2) The licensee or lessee shall within two years of the date of his licence or lease erect on the holding described therein a suitable residence to the satisfaction of the Commissioner.

*(3) The licensee or lessee shall if not sooner called upon by the Commissioner within two years from the date of the licence or lease enclose the holding described in such licence or lease with a fence and keep the same in repair; provided however that when any settler proves to the satisfaction of the Commissioner that owing to physical conditions or the nature of the holding the enclosing thereof with a fence would be impracticable or when in the opinion of the Commissioner the fencing of the whole or any part of the holding is not required the Commissioner may in writing dispense with the necessity for compliance with the fencing conditions as to the whole or such part.

(4) The licensee or lessee shall within twelve months of the date of his licence or lease commence and continue to destroy to the satisfaction of the Commissioner the noxious animals and weeds upon his holding and shall keep the same free from noxious animals and weeds to the satisfaction of the Commissioner during the currency of the licence or lease.

(5) The licensee or lessee of any holding shall plant and keep planted with trees such area and for such term as may be fixed and stated in his licence or lease. The kind and

* See Act No. 26 of 1909, sec. 8.

number of trees to be planted shall be prescribed by regulation and the position where such trees shall be planted shall be pointed out by the District Commissioner or some person authorized by him.

Licensee or lessee to occupy exclusively for his own benefit.

26. The licensee or lessee shall occupy his holding for the term of such licence or lease exclusively for his own use and benefit.

Mortgage forbidden.

27. (1) No settler shall mortgage or charge or otherwise encumber his licence or lease or any portion of his interest in such licence or lease and any such mortgage charge or other encumbrance shall be null and void.

†(2) All debts owing to the Government by a settler shall be a first charge upon the holding of such settler and upon all movable property thereon.

Transfer and sub-letting restricted.

28. Except with the consent of the Commissioner which shall only be given when sufficient cause is shown it shall not be lawful for any settler to transfer let sub-let or in any way part with his licence or lease or any portion of his interest in such licence or lease.

Surrender of licence or lease.

29. (1) The Commissioner may upon sufficient cause being shown at any time accept the surrender of any licence or lease and in such case the value of the unexhausted improvements made on the holding by the settler shall be added to the price of the holding on re-allotment. The amount of such improvements shall be paid to the outgoing settler within three months of the date on which he quits the holding.

(2) A settler who is permitted to surrender his holding on account of ill-health or because he is owing to adverse circumstances or other sufficient cause unable to make the occupation of it remunerative may if he obtains a certificate from the Commissioner that he has occupied the holding to the Commissioner's satisfaction receive another holding.

(3) Any person who surrenders his holding otherwise than as provided in the last preceding sub-section or who forfeits or assigns his holding shall be disqualified from receiving another.

Surrender in favour of wife or child.

30. Any settler who is not in arrear with his instalments and who has fulfilled the other conditions of his licence may apply to the Commissioner for permission to surrender any portion of his holding in order that a new licence of the surrendered part may be granted to the wife of such settler if qualified to become a settler or any child of such settler who is over eighteen years of age and who is qualified to become a settler. The Commissioner may if he thinks fit accept such surrender and may grant a licence of the part so surrendered to the wife or any child as aforesaid who applies therefor and the instalments of licence money due in respect of such holding at the date of surrender shall be divided proportionately between the two licensees.

† See also Act No. 37 of 1907, sec. 5.

31. (1) Where a settler desires to transfer his interest in his holding he may apply to the Commissioner stating his intention and naming the person to whom he proposes to transfer the holding; whereupon the said Commissioner shall at the expense of the said settler give public notice at least twice in the *Gazette* of the proposed transfer of interest by the settler and no transfer shall be effected until after the expiration of thirty days from the date of the second or last publication as the case may be of such notice; after which time if the Commissioner sees fit to accept the person proposed as transferee and such person shall have made the declaration referred to in section *five* the said Commissioner shall endorse the said transfer of the licence or lease on the production of the same; and thereupon such person shall be deemed to have been from the date of the original licence or lease the licensee or lessee of such holding.

Procedure in case of transfer.

(2) The transferee shall be liable for any moneys owing by the transferor to the Government in respect of the holding or for anything supplied by the Commissioner for use on the holding so transferred and the transferor shall be further discharged from all further liability in respect of such holding.

(3) Two settlers may subject to the consent of the Commissioner and to such conditions as he may impose exchange their holdings.

32. In case of the insolvency of any settler during the currency of his licence or lease it shall be lawful for the trustee in insolvency to assign such licence or lease to any person who is qualified to become a settler under this Ordinance and who is approved by the Commissioner and such person shall thereupon be with respect to such licence or lease in the same position as though he had been the original licensee or lessee. In case the said trustee in insolvency fails within twelve months to assign the licence or lease of the holding of such settler as herein provided the licence or lease shall revert to the Crown who shall pay to the said trustee compensation for improvements if any.

Insolvency of settler.

33. If the holder of a licence or lease dies or is declared a lunatic the conditions of such licence or lease may be fulfilled by any member of his family or by any other person approved by the Commissioner. If no such person is forthcoming the licence or lease shall revert to the Crown who shall pay to the representative of the settler compensation for improvements if any and in the case of a licence shall repay such portion of the instalments paid as is hereinafter provided.

Death or lunacy of settler.

34. All the conditions of a licence or lease under this Ordinance shall be binding upon the successive holders thereof; and any transferee shall take the licence or lease subject to all unfulfilled obligations attaching thereto.

Conditions binding on transferee.

- Extension of time for fulfilment of conditions. 35. The Commissioner on good cause shown may grant an extension of time not exceeding twelve months to a settler for the fulfilment of any condition or the performance of any act the fulfilment or performance of which is required by this Ordinance.
- Forfeiture. 36. (1) A licence or lease shall be liable to forfeiture for the breach of any of the conditions of such licence or lease or for the violation of any of the provisions of this Ordinance.
(2) If a licence or lease become liable to forfeiture under the provisions of this Ordinance such licence or lease may be forfeited while held by the person by whom forfeiture was incurred or by any person claiming under him. No holding shall be liable to be forfeited after five years from the date when the liability to forfeiture was incurred.
- Waiver of forfeiture. 37. (1) In any case in which a licence or lease shall become liable to forfeiture by reason of the non-fulfilment of any condition attached to such licence or lease or for the violation of any of the provisions of this Ordinance but in which the Commissioner shall be satisfied that such non-fulfilment has been caused by accident error inadvertence or other like cause and that such forfeiture ought therefore to be waived it shall be lawful for the Commissioner to declare that such forfeiture is waived either absolutely or upon such conditions as he may see fit to attach and the forfeiture shall thereupon be waived accordingly.
(2) The Commissioner may in lieu of forfeiting for non-payment of moneys accept payment of such moneys with an additional sum equal to five per centum of the amount due within three months of the due date thereof or of ten per centum of such amount within six months of such date; but no forfeiture shall operate to extinguish any debt due to the Crown in respect of such moneys.
- Compensation on relinquishing a holding. 38. When any holding is forfeited to or surrendered to the Crown the Commissioner shall cause the substantial improvements of a permanent character thereon to be valued and the amount of such valuation to be paid to the outgoing settler or his representative. The Commissioner shall be entitled to deduct from any sum due in respect of such valuation the expenses incidental to the forfeiture or surrender and the re-allotment of such holding and any moneys still due to the Government under this Ordinance.
- Method of compensation. 39. (1) Compensation shall not be given on account of improvements unconnected with the ordinary use of the land or of extravagant improvements not adapted to increase the value of the holding but such improvements may be sold to an incoming settler or removed before the determination of the licence or lease provided this can be done without substantial injury to the holding.

(2) All disputes in respect of compensation shall be heard by the District Commissioner in open court according to the procedure to be defined by regulation and an appeal shall lie from his decision to the Land Board.

†40. In the case of the forfeiture of a holding or in the case of the surrender of a holding owing to the death or lunacy of the licensee or any other cause the Commissioner shall cause to be repaid to the licensee or his representative so much of the total amount of the instalments paid by him as shall be apportionable to capital according to the table contained in the schedule annexed hereto provided that no such repayment shall be made in case of forfeiture for any of the following causes:—

Repayment
of capital.

(1) Transferring mortgaging letting or sub-letting without the consent of the Commissioner.

(2) Wilfully making a false declaration under section *five*.

(3) Wrongfully disposing of or misapplying farming requisites stock or materials supplied under the Ordinance or money advanced to purchase such requisites stock or materials.

41. At the expiration of the licence and on the fulfilment of the terms and conditions thereof or at such time not being less than ten years from the date of the licence as the purchase price and all other moneys due to the Government shall have been paid the licensee shall obtain a Crown Grant subject to the conditions laid down in sections *twenty-one* and *twenty-two* of this Ordinance.

Issue of
Crown Grant.

ADVANCES.

*42. (1) It shall be lawful for the Commissioner to purchase out of moneys provided by the Government for that purpose and to supply from time to time to any settler for use on or improvement of his holding

Advances to
settlers.

(A) farming requisites (which term shall include draught animals carts wagons farming implements and machinery farm seeds and other supplies approved by the Commissioner);

(B) stock for breeding purposes (which term shall include horses donkeys cattle sheep goats and pigs) upon the following terms and conditions:—

‡(a) No stock shall be supplied until the holding or that portion of it which is used for grazing purposes has been fenced with a sufficient fence;

‡(b) one-half the price of the stock shall be paid for by the settler in cash on delivery; or the Commissioner may in lieu thereof accept as security for payment of such one-half any other stock belonging to the settler. The stock so given by way of security may be left in charge of the settler and shall be maintained at his expense;

† See Act No. 26 of 1909, sec. 8 (4).

* See Act No. 37 of 1907, sec. 6 (4) and (5).

‡ See however Act No. 37 of 1907, sec. 6 (4).

*(c) the stock supplied shall not exceed one-third the carrying capacity of the holding at the date of the licence or lease;

(d) until the stock so supplied has been paid for the settler shall not without the consent of the Commissioner sell or otherwise alienate the same or any stock given by way of security;

(C) materials suitable for building fencing or for carrying out other substantial improvements of a permanent character. The total indebtedness of the settler on account of supplies under this head shall not at any time without the special sanction of the Lieutenant-Governor exceed either of the following limits—

(a) one-half the cost (including the value of the labour) of the improvements;

(b) one-half the price of the holding as notified in the *Gazette*.

(2) The total advances to any settler under this section shall not at any time exceed the amount which the settler shall up to that time have expended to the satisfaction of the Commissioner on the holding by way of capital outlay on improvements in connection with its occupation together with the amount if any which the settler may prove to the satisfaction of the Commissioner that he is prepared and in a position to expend within a reasonable time on improvements in connection with the occupation of his holding.

(3) So long as the settler has in his possession any stock supplied by the Commissioner and not wholly paid for he shall grow such quantity of fodder as the District Commissioner shall deem necessary for the stock on the farm and no part of such fodder shall be sold without the consent of the District Commissioner.

In any case in which it appears to the Commissioner expedient so to do he may instead of supplying the things in this section mentioned in kind advance money to the settler to enable him to purchase the same.

Advances in excess of limit.

†43. Notwithstanding anything contained in the last preceding section it shall be lawful for the Commissioner in special cases with the approval of the Lieutenant-Governor to make advances to any settler in excess of the limits laid down in the said section.

Relief in exceptional cases.

44. If the settler proves to the satisfaction of the Commissioner that owing to disease drought or other cause over which he has no control (but against which he has taken all reasonable precautions) he has lost such a quantity of stock or farm produce that he is unable to occupy the farm profitably or pay the instalments of purchase money the Commissioner may remit subject to the provisions of the next succeeding section the payment of the instalments of purchase money or any part thereof for a period not exceeding two years.

* See however Act No. 37 of 1907, sec. 6 (4).

† See Act No. 37 of 1907, sec. 6 (5).

45. (1) The price of anything supplied for permanent improvements under the provisions of sections *forty-two* and *forty-three* or cash advanced to purchase the same and the amount of any instalments remitted under the provisions of the last preceding section shall be repayable within such time and in such manner as may be agreed upon at the time the supply advance or remission as the case may be was made; provided that the entire debt or debts with interest at the rate of four and a half per cent. per annum on the amount outstanding shall be paid before the expiration of the licence or lease.

Repayment
of advances.

(2) The price of farming requisites and stock or cash advanced to purchase the same shall be repayable with interest at a rate not exceeding seven and a half per cent. per annum on the amount outstanding within such time and in such manner as may be agreed upon at the time the farming requisites or stock were supplied or cash was advanced not being more than ten years from the date of such supply or in the case of a lessee before the termination of the lease.

46. All farming requisites stock or materials supplied to a settler under any of the provisions of this Ordinance shall remain the property of the Government until paid for or until authority to alienate shall have been given to such settler by the Commissioner but such stock as well as any stock given by way of security under section *forty-two* of this Ordinance shall be at the risk of the settler.

Goods
advanced to
remain
property of
the
Government
till paid for.

POWERS OF DISTRICT COMMISSIONERS DISTRICT BOARDS AND DISTRICT INSPECTORS.

47. (1) The Commissioner or District Commissioner may from time to time as he shall see fit authorize any district inspector or other person to ascertain and report to him upon the following matters—

Right of
inspection.

(a) whether any holding is being cultivated in a proper and husbandlike manner;

(b) whether any money material stock or other things supplied by Government are being properly applied;

(c) the value of any improvements on any holding;

(d) whether the conditions of any lease or licence are being complied with; and

(e) generally on any matters incidental to carrying out the provisions of this Ordinance.

(2) For the purpose of making any such report any inspector or any other authorized person shall at all reasonable times have free access to any holding in the occupation of any settler and to the buildings and stock thereon; and any settler obstructing such inspector or other authorized person in the performance of his duty or refusing or wilfully neglecting to answer any reasonable questions put to him in writing by the said inspector or other authorized person in connection with his duty or making to him any wilful misstatement shall be liable to a penalty not exceeding fifty pounds and in default of payment to imprisonment for a term not exceeding one month.

Inquiry by
District Com-
missioner.

48. (1) The District Commissioner may at any time of his own motion or at the direction of the Commissioner inquire in open court subject to appeal to the Land Board whether the settler has up to the date of the inquiry duly performed all conditions (other than the payment of instalments or rent) attached to his licence or lease or imposed by this Ordinance and shall at the direction of the Commissioner inquire in open court subject to appeal as aforesaid whether the settler is occupying or has occupied his holding for his own exclusive use and benefit.

(2) If upon such inquiry the licensee or lessee satisfies the District Commissioner that he has up to the date of the inquiry duly fulfilled all such conditions the District Commissioner shall issue to him a certificate to that effect.

(3) If at any time the District Commissioner upon inquiry subject to the aforesaid right of appeal is satisfied that the settler has not performed all such conditions or has not held or is not holding the licence or lease for his own exclusive use and benefit the Commissioner may by notification in the *Gazette* declare the interest of the settler or his assignee in the holding to be forfeited and thereupon the right of the settler or his assignee to continue in occupation shall wholly cease and determine.

Appeal.

49. (1) The settler may within such time as may be fixed by regulation after the decision of the District Commissioner appeal to the Land Board on all matters on which the said District Commissioner is by the terms of this Ordinance empowered to decide. The Land Board shall hear and determine the appeal or may in its discretion remit the case to be reheard as to the whole or any part thereof by the District Commissioner with such directions as it may think fit. If no appeal is brought within the time to be prescribed by regulation the decision of the District Commissioner shall be final.

(2) The decision of the Land Board on appeal shall be final except that the board shall at the request of the Commissioner or of the settler state a special case on a question of law for the decision of the Supreme Court.

MISCELLANEOUS.

Application
for increase
of holding.

50. (1) If at any time a settler shall satisfy the Commissioner that the area held by him is insufficient for his requirements the Commissioner may allow him to take up such additional adjoining area (if vacant) as the Commissioner may think fit.

(2) At any time on the application of a settler the Commissioner may adjust the boundaries of his holding.

Neighbours.

51. (1) Settlers whose holdings adjoin may apply for permission to reside together and the District Commissioner may if he think fit grant such permission which shall remain in force until revoked.

(2) For such time as such permission remains unrevoked the condition of residence for each settler in respect of his own holding shall be satisfied by residence on any of the holdings; and the stock of such settlers may be depastured over any of

the holdings in common; and the erection of one residence within the required time on one of the holdings shall be taken to satisfy the condition of house building in respect to such holdings; and any areas to be cultivated may be cultivated anywhere on the holdings.

(3) All other conditions must be performed as for each holding separately and each settler shall be individually responsible for his own holding and for all payments and advances in respect thereof.

(4) The Commissioner may at any time revoke such permission on giving three months' notice to the settlers of his intention to do so; and within two years after such permission shall have been revoked each settler shall erect a residence on his own holding.

52. When any fence forms the common boundary between two holdings it shall be obligatory on each settler to fence such half of the common boundary as may be agreed on or in default of such agreement may be directed by the District Commissioner. And it shall be lawful for a settler who has completed the fencing of the common boundary to recover half the cost thereof before any competent court provided that he has given the adjoining settler not less than one month's notice of his intention so to fence.

Fencing
between
settlers'
holdings.

The side of a proclaimed road shall not be held to form or be a common boundary line within the meaning of this section.

53. Any minor being of the age of eighteen years who becomes a settler under this Ordinance shall be in the same position with regard to his liability under and enforcement by him of all contracts made with respect to his holding as though he were of the full age of twenty-one years.

Liability of
minors.

54. Any settler who wrongfully disposes of any farming requisites stock or materials advanced or supplied to him under this Ordinance or who wrongfully applies any such requisites stock or materials or any moneys advanced to him to any purpose other than that for which they were supplied or advanced shall be guilty of the crime of fraud and shall be punishable accordingly and every such disposition shall be of no effect.

Any settler
disposing of
material
advanced
guilty of
fraud.

55. All contracts agreements and securities which are made entered into or given with the intent or which (if the same were valid) would have the effect of violating all or any of the provisions of this Ordinance or any condition of a licence or lease granted under this Ordinance shall and are hereby declared to be illegal and absolutely void.

Contracts
conflicting
with
Ordinance.

56. In the case of any negotiations for the acquisition of land by the Lieutenant-Governor any person who having any pecuniary interest in such land or being the partner of or being related within the fourth degree to the vendor of such land acts as valuer or sits or votes at any meeting of any board or District Board upon any resolution having reference to the purchase of such land shall be liable to a penalty not exceeding

Penalties.

two hundred pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding one year.

District
Commissioner
or member of
Land Board
not to
adjudicate
where his
interest is
involved.

57. Any District Commissioner or member of any Land Board who shall sit or adjudicate on any matter in which he has directly or indirectly any pecuniary interest shall be liable to a fine not exceeding two hundred pounds and in default of payment to imprisonment with or without hard labour for a term not exceeding one year.

Disabilities.

58. No person so long as he is an officer of the Land Department or member of the Land Board and for six months after ceasing to be such officer or member shall be eligible as an applicant for any land to be allotted under the provisions of this Ordinance; and any such person who having ceased to be an officer or member as aforesaid has thereafter been allotted lands under this Ordinance shall be ineligible to again become an officer or member so long as he remains in possession of such lands.

Regulations.

† 59. It shall be lawful for the Lieutenant-Governor from time to time to make regulations for all or any of the following purposes—

- (1) for the principle and method to be adopted in valuing lands for the purposes of this Ordinance;
- (2) for fixing the scale of expenses and costs of valuation;
- (3) for prescribing the functions and duties of local boards;
- (4) for defining the procedure on public inquiries by District Commissioners and appeals to the Land Board;
- (5) for prescribing the duties of valuers and inspectors;
- (6) for the prevention of veld fires;
- (7) for specifying the rules of good husbandry;
- * (8) for any object or purpose that may be deemed necessary for the efficient administration of this Ordinance.

All such regulations so far as not inconsistent with this Ordinance shall be binding upon all persons as if contained in this Ordinance.

Title

60. This Ordinance may be cited as the "Settlers Ordinance 1902".

† See however Act No. 37 of 1907, sec. 13.

* For regulations see Govt. Notices No. 1279 of 1903 (*Gazette*, 6/11/03, p. 1164); 1380 of 1903 (*Gazette*, 4/12/03); 679 of 1906 (*Gazette*, 13/7/06); 179 of 1907 (*Gazette*, 15/2/07); 655 of 1908 (Compensation to Settlers (*Gazette*, 17/7/08).

SCHEDULE.

Table showing instalments due every half-year to complete the purchase of land priced at £100 (*vide* section *fourteen*).

	COLUMN A. Half-Yearly Instalment.	APPORTIONED AS FOLLOWS :		BALANCE OF DEBT.
		Column B. Interest.	Column C. Capital.	
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1	2 17 6	2 0 0	0 17 6	99 2 6
2	2 17 6	1 19 8	0 17 10	98 4 8
3	2 17 6	1 19 4	0 18 2	97 6 6
4	2 17 6	1 18 11	0 18 7	96 7 11
5	2 17 6	1 18 6	0 19 0	95 8 11
6	2 17 6	1 18 2	0 19 4	94 9 7
7	2 17 6	1 17 10	0 19 8	93 9 11
8	2 17 6	1 17 5	1 0 1	92 9 10
9	2 17 6	1 17 0	1 0 6	91 9 4
10	2 17 6	1 16 7	1 0 11	90 8 5
11	2 17 6	1 16 2	1 1 4	89 7 1
12	2 17 6	1 15 9	1 1 9	88 5 4
13	2 17 6	1 15 3	1 2 3	87 3 1
14	2 17 6	1 14 10	1 2 8	86 0 5
15	2 17 6	1 14 5	1 3 1	84 17 4
16	2 17 6	1 13 11	1 3 7	83 13 9
17	2 17 6	1 13 6	1 4 0	82 9 9
18	2 17 6	1 13 0	1 4 6	81 5 3
19	2 17 6	1 12 6	1 5 0	80 0 3
20	2 17 6	1 12 0	1 5 6	78 14 9
21	2 17 6	1 11 6	1 6 0	77 8 9
22	2 17 6	1 11 0	1 6 6	76 2 3
23	2 17 6	1 10 5	1 7 1	74 15 2
24	2 17 6	1 9 11	1 7 7	73 7 7
25	2 17 6	1 9 4	1 8 2	71 19 5
26	2 17 6	1 8 10	1 8 8	70 10 9
27	2 17 6	1 8 3	1 9 3	69 1 6
28	2 17 6	1 7 8	1 9 10	67 11 8
29	2 17 6	1 7 0	1 10 6	66 1 2
30	2 17 6	1 6 5	1 11 1	64 10 1
31	2 17 6	1 5 10	1 11 8	62 18 5
32	2 17 6	1 5 2	1 12 4	61 6 1
33	2 17 6	1 4 6	1 13 0	59 13 1
34	2 17 6	1 3 10	1 13 8	57 19 5
35	2 17 6	1 3 2	1 14 4	56 5 1
36	2 17 6	1 2 6	1 15 0	54 10 1
37	2 17 6	1 1 10	1 15 8	52 14 5
38	2 17 6	1 1 1	1 16 5	50 18 0
39	2 17 6	1 0 4	1 17 2	49 0 10
40	2 17 6	0 19 7	1 17 11	47 2 11
41	2 17 6	0 18 10	1 18 8	45 4 3
42	2 17 6	0 18 1	1 19 5	43 4 10
43	2 17 6	0 17 4	2 0 2	41 4 8
44	2 17 6	0 16 6	2 1 0	39 3 8
45	2 17 6	0 15 8	2 1 10	37 1 10
46	2 17 6	0 14 10	2 2 8	34 19 2
47	2 17 6	0 14 0	2 3 6	32 15 8
		<i>Carried forward</i>		

	COLUMN A. Half-Yearly Instalment.	APPORTIONED AS FOLLOWS :		BALANCE OF DEBT.
		Column B. Interest.	Column C. Capital.	
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
		<i>Brought forward</i>		
48	2 17 6	0 13 1	2 4 5	30 11 3
49	2 17 6	0 12 3	2 5 3	28 6 0
50	2 17 6	0 11 4	2 6 2	25 19 10
51	2 17 6	0 10 5	2 7 1	23 12 9
52	2 17 6	0 9 5	2 8 1	21 4 8
53	2 17 6	0 8 6	2 9 0	18 15 8
54	2 17 6	0 7 6	2 10 0	16 5 8
55	2 17 6	0 6 6	2 11 0	13 14 8
56	2 17 6	0 5 6	2 12 0	11 2 8
57	2 17 6	0 4 5	2 13 1	8 9 7
58	2 17 6	0 3 5	2 14 1	6 15 6
59	2 17 6	0 2 4	2 15 2	3 0 4
60	3 1 6	0 1 2	3 0 4	—
			£100 0 0	

Repealed by Act No. 4 of 1906

No. 46 of 1902.]

[Promulgated 19th December, 1902.]

ORDINANCE*

TO PROVIDE FOR THE NATURALIZATION OF ALIENS.

(Assented to 18th December, 1902.)

WHEREAS it is desirable to provide for the naturalization within this Colony of aliens residing therein:

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

† 1. (1) *An alien who has been in the service of the Crown or who within such limited time ‡ before making the application hereinafter mentioned as may be prescribed by the Lieutenant-Governor either by general order or on any special occasion has resided in the Transvaal for*

(a) *a term of not less than five years; or*

(b) *who having resided in the Transvaal for a term of one year immediately before making the application hereinafter mentioned has also resided in any part of His Majesty's Dominions for such period as together with the period of one year aforesaid will make up five years in all; and who intends when naturalized to reside or to serve under the Crown in the Transvaal may apply for a certificate of naturalization in the form prescribed in the First Schedule hereto.*

§(2) The applicant shall produce in support of his application a certificate signed by some resident magistrate assistant resident magistrate or justice of the peace to the effect that the applicant is known to the person so signing and that to the best of such person's belief and knowledge the applicant is a person of good repute; and shall give such further evidence of the completion by him of the said term of service or of residence and of his intention to reside or to serve under the Crown in the Transvaal as the Lieutenant-Governor may require; and shall furnish proof that notice of his intention to apply for a certificate of naturalization has been published in two issues of the *Gazette*.

(3) The Lieutenant-Governor if satisfied with the evidence adduced shall take the applicant's case into consideration and may with or without assigning any reason grant or withhold a certificate as he thinks most conducive to the public good and no appeal shall lie from his decision.

(4) No such certificate shall have any effect until the applicant has made and subscribed to the declaration of allegiance in the form prescribed in the Second Schedule hereto.

* See Ord. No. 10 of 1904, sec. 2.

† Sec. 1 (1) substituted by Ord. No. 10 of 1904, sec. 1.

‡ Fixed at ten years by Govt. Notice No. 580 of 1909 (*Gazette*, 28/5/09).

§ As to regulations see Govt. Notice No. 1313, 1906 (*Gazette*, 14/12/06).

Certificate issued after declaration of allegiance.

2. If the Lieutenant-Governor thinks fit to grant such certificate of naturalization he shall direct the applicant to make and subscribe the declaration of allegiance in the form prescribed in the Second Schedule hereto before some resident magistrate or justice of the peace; and upon the certificate of such resident magistrate or justice of the peace that the applicant has made and subscribed before him the said declaration he shall cause to be issued to the applicant a certificate of naturalization in the form prescribed by the Lieutenant-Governor.

Rights and duties conferred and imposed by naturalization.

3. Every person to whom a certificate of naturalization under this Ordinance is granted shall except as otherwise provided by law be entitled to all rights powers and privileges and be subject to all obligations to which a natural born British subject is entitled or subject in this Colony.

Nationality of married women and of minors.

4. (1) Every married woman shall in this Colony be deemed to be a subject of the State of which her husband is for the time being a subject.

(2) Where the father or the mother (being a widow) shall be or become naturalized under this Ordinance any child of such father or mother who while under age shall be or become resident with such father or mother in this Colony shall be deemed and taken to be naturalized under this Ordinance.

Half-yearly returns of persons naturalized to be published.

5. A return of all persons to whom certificates of naturalization shall have been granted under this Ordinance during the preceding half-year shall be published in the *Gazette* in the months of January and July and such return shall show in respect of each person

- (1) name in full;
- (2) birthplace;
- (3) nationality prior to grant of certificate;
- (4) occupation;
- (5) period of service under the Crown or of residence in the Transvaal;
- (6) date of issue of certificate.

False statement on application for naturalization equivalent to perjury.

6. If any person shall knowingly make any false statement in any application made under this Ordinance for the purpose of obtaining a certificate of naturalization he shall upon conviction incur the same penalties as are by law provided against persons convicted of perjury and in case a certificate of naturalization shall have been granted such certificate may be revoked by notice in the *Gazette* and from the date of such notice shall be deemed to be void.

Fees payable on naturalization.

7. Every person obtaining a certificate of naturalization under this Ordinance shall pay for the same a fee of one pound to be denoted by revenue stamps to be affixed to such certificate and cancelled by the officer issuing it.

Register of naturalized persons to be kept open to inspection.

8. The Colonial Secretary shall cause a register to be made and kept of all certificates of naturalization granted under this Ordinance and shall upon the application in writing of any person and upon payment of a fee of five shillings to be denoted by revenue stamps affixed to the application and

cancelled by the officer receiving it permit a search to be made for the name of any person upon or supposed to be upon the register.

9. A certificate under the hand of the Colonial Secretary attesting the fact of the issue of a certificate of naturalization to any person whose name appears upon the said register shall be issued upon payment of a fee of five shillings to be denoted by revenue stamps affixed to the certificate and cancelled by the officer issuing it. Every such certificate shall be received as evidence of the facts therein stated.

Certificate of registration.

10. Every certificate granted under this Ordinance shall be admissible in evidence without proof of the signature or seal attesting the same and shall be prima facie evidence of the person named therein being duly naturalized and of the signature or seal attesting the same and of the official character of the persons appearing to have signed the same.

Certificate admissible in evidence.

11. This Ordinance may be cited as the "Naturalization of Aliens Ordinance".

Title.

FIRST SCHEDULE.

* FORM OF APPLICATION FOR CERTIFICATE OF NATURALIZATION.

To the Colonial Secretary of the Transvaal :

I, A.B., do hereby apply for a certificate of naturalization in the Transvaal, and I declare that the following statements are true and correct in every particular :

- 1. Name of applicant in full.....
- 2. Married or single.....
- 3. Names and ages of children (if any).....
- 4. Present nationality, and whether acquired by birth or naturalization.....
- 5. If applicant has resided in British dominion other than the Transvaal state place or places and period or periods of such residence.....
- 6. Names and nationality of parents.....
- 7. Birthplace (state fully name of place and country).....
- 8. Age next birthday.....
- 9. Occupation.....
- 10. Place of residence in Transvaal.....
- 11. Period or periods during which and place or places in which applicant has resided in Transvaal, giving dates and addresses.....
- 12. Length of time during which applicant has been in service of Crown.....
- 13. Does the applicant if naturalized intend to reside in Transvaal.....

Declared at....., this..... day of....., 19.....

Signature of Applicant.

Before me,..... R.M. or J.P.

SECOND SCHEDULE.

DECLARATION OF ALLEGIANCE.

I, A.B., of..... do sincerely promise that I will be faithful and bear true allegiance to His Majesty King Edward VII., His Heirs and Successors according to law.

Declared at....., this..... day of....., 19.....

Signature of Declarant.

Before me,..... R.M. or J.P.

* This form substituted by Ord. No. 10 of 1904, sec. 3.

No. 47 of 1902.] [Promulgated 24th December, 1902.]

ORDINANCE

TO AMEND THE MAGISTRATES COURT PROCLAMATION 1902.

(Assented to 19th December, 1902.)

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. Section *thirty-six* of the Magistrates Court Proclamation 1902 is hereby amended

(a) by substituting for the words "any child male or female" in line *one* the words "any male child";

(b) by omitting the words "or she" in line *twenty* and "or her" in line *twenty-two*.

2. This Ordinance may be cited as the "Magistrates Court Proclamation Amendment Ordinance 1902".

Amendment
of section
thirty-six of
Proclamation
No. 21 of
1902.

Title.

No. 48 of 1902.]

[Promulgated 31st December, 1902.]

ORDINANCE

TO PROTECT THE RIGHTS OF PROPERTY IN TELEGRAPHIC
MESSAGES INTENDED FOR PUBLICATION.

(Assented to 24th December, 1902.)

WHEREAS it is expedient to protect in certain cases the rights of property in telegraphic messages:

Be it enacted by the Lieutenant-Governor of the Transvaal by and with the advice and consent of the Legislative Council thereof as follows:—

1. Whenever any message transmitted by telegraph from any place outside this Colony shall be received at any office of the Telegraph Department in this Colony for the purpose of publication in any newspaper or other printed paper no person shall without the consent in writing of the person to whom such message shall have been addressed print or publish in any newspaper or in any letter or circular or other printed or written communication or present for transmission by telegraph such telegraphic message or the substance thereof or any extract therefrom until after the expiration of a period of seventy-two hours from the time of the first publication of such message by the person entitled to publish the same provided that the publication by any other person of any similar message lawfully received in like manner by such other person shall not be deemed or taken to be a publication of such first-mentioned message within the meaning of this Ordinance.

Protection of certain telegrams from publication within a certain period.

2. Any person contravening the provisions of the preceding section shall upon conviction be liable to a penalty not exceeding twenty pounds for the first offence and to a penalty not exceeding forty pounds for the second and every subsequent offence and in either case in default of payment he shall be liable to imprisonment for a period not exceeding three months.

Penalties.

3. The hour of publication of every newspaper containing any telegraphic message in respect of which the protection of this Ordinance is claimed shall unless otherwise stated therein be deemed to be six a.m. on the day of publication.

Hour of publication defined.

4. In any prosecution under this Ordinance the production of any document which purports to be a telegraphic message duly and regularly issued by any telegraphic office in this Colony on its customary form shall be prima facie evidence that the message contained therein was received in this Colony by telegraph from the place therein mentioned to the address of the person therein named and was duly delivered in this Colony to such person.

Evidence.

5. This Ordinance shall be cited for all purposes as the "Telegraph Messages Protection Ordinance 1902".

Title.

No. 49. of 1902.]

[Promulgated 31st December, 1902.]

ORDINANCE

TO AMEND THE LAW RELATING TO THE REGISTRATION OF
NEWSPAPERS.

(Assented to 24th December, 1902.)

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Newspapers
to be
registered in
office of
Colonial
Secretary.

1. (1) From and after the taking effect of this Ordinance it shall not be lawful for any person to print or publish or cause to be printed or published in this Colony any newspaper until there shall have been registered at the office of the Colonial Secretary

(a) the full and correct title thereof;

(b) the full and correct address at which the same is to be published;

(c) the full and correct names and places of abode of the proprietor printer publisher manager and responsible editor of such newspaper.

(2) In some part of every newspaper published in this Colony after the taking effect of this Ordinance there shall be printed the full and correct address at which the same is published and the full and correct name of the proprietor.

(3) The responsible editor of every such newspaper must be a person resident within this Colony.

Further
particulars to
be registered
when the
publisher etc.
is a company.

2. When any newspaper is the property of or is printed or published by a limited liability company or other joint stock company there shall be entered in the register prescribed by this Ordinance the full and correct name and place of abode of

(a) the manager or other chief officer of such company resident within this Colony;

(b) every director of such company resident within this Colony.

Colonial
Secretary to
keep a
register.

3. (1) It shall be the duty of the Colonial Secretary to keep a register in the form prescribed in the schedule annexed hereto in which shall be entered the particulars in the two preceding sections mentioned.

(2) It shall be the duty of the Colonial Secretary to furnish an extract from the said register duly signed by him to any person on application being made therefor and on payment of a fee of two shillings and sixpence for every such extract to be denoted by revenue stamps affixed to the extract and cancelled by the officer issuing the same.

(3) The production of such extract as in the last preceding sub-section mentioned signed as aforesaid shall in any proceeding civil or criminal be sufficient proof of the facts therein stated.

4. The publisher of every newspaper published in this Colony at the date of the taking effect of this Ordinance shall within one month from such date transmit as regards such newspaper to the Colonial Secretary the particulars mentioned in sections *one* and *two* of this Ordinance provided that no fee shall be payable in respect of such registration. Provision as to registration of existing newspapers.
5. Whenever a change occurs in regard to any of the particulars entered in the register kept in pursuance of this Ordinance such change shall within seven days of the date thereof be notified by the publisher for the time being of the newspaper in respect of which such change occurs to the Colonial Secretary who shall cause the register to be corrected accordingly. Changes to be registered.
6. Any person who shall contravene any of the provisions of sections *one two four* or *five* of this Ordinance shall on conviction before the resident magistrate of the district in which the penalty is incurred be liable to a penalty not exceeding one hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months. Penalties.
7. Whenever a libel is published in any newspaper printed or published in this Colony criminal proceedings may be taken against all or any of the persons mentioned in sections *one* and *two* of this Ordinance provided that it shall be a defence to such proceedings on behalf of any such person as aforesaid to prove that the libel complained of was published in such newspaper without his knowledge consent or connivance and without negligence on his part. Person responsible for libels.
8. There shall be paid for and in respect of the registration of any newspaper except as provided in section *four* hereof the sum of one pound to be denoted by revenue stamps affixed to the certificate and cancelled by the person issuing it and in respect of the registration of any change in pursuance of section *five* hereof the sum of two shillings and sixpence to be similarly denoted. Registration fee.
9. Law No. 26 of 1896 and Law No. 14 of 1898 are hereby repealed. Repeal of laws.
10. This Ordinance may be cited for all purposes as the "Newspaper Registration Ordinance 1902". Title.

SCHEDULE.

REGISTER OF NEWSPAPERS.

Title of Newspaper and Address of Office of Publication.	Name and Address of Proprietor. (a)	Name and Address of Printer. (a)	Name and Address of Publisher. (a)	Name and Address of Manager.	Name and Address of Responsible Editor.

(a) Where there are more proprietors, printers, and publishers than one, the name and address of each must be given. Where the proprietor, printer, or publisher is a company, then in addition to the name of the company the name and address of the manager, and of each of the directors resident in this Colony must be entered in these columns.

No. 50 of 1902.]

[Assented to 29th December, 1902.

ORDINANCE

TO AMEND LAW NO. 17 OF 1899.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. So much of article *six* of Law No. 17 of 1899* as imposes a licence upon persons exercising the profession of

advocate
physician
surgeon
dentist or
commercial traveller

Abolition of
certain
licences.

shall upon the taking effect of this Ordinance be repealed.

2. (1) Every company carrying on banking business shall take out a yearly licence which shall authorize the carrying on of such business at the head or principal office and at every branch office of such company in this Colony.

Banking
licence.

(2) The amount payable in respect of such licence shall be five hundred pounds when the paid-up capital does not exceed five hundred thousand pounds and an additional sum of one pound in respect of each complete one thousand pounds of paid-up capital in excess of five hundred thousand pounds.

(3) Every such licence shall be taken out at the office of the Receiver of Revenue for the district in which the head or principal office of such company in this Colony is situated.

(4) The person applying for such licence shall at the time of application lodge with the Receiver of Revenue a certified statement signed by the chairman manager or other responsible officer of the company in this Colony showing the paid-up capital of such company.

(5) So much of article *six* of Law No. 17 of 1899 as imposes a yearly licence of one hundred and fifty pounds in respect of each branch of a bank shall upon the taking effect of this Ordinance be repealed but all the other provisions of the said law shall in so far as they are not inconsistent with the provisions of this Ordinance apply to the licence imposed by this section.

3. Article *twenty-six* of Law No. 17 of 1899 shall be and is hereby repealed.

Repeal.

4. This Ordinance shall be cited as the "Licensing Law Amendment Ordinance 1902" and shall take effect from and after the first day of January 1903.

Title and
operation.

* Repealed by Ord. No. 23 of 1905, sec. 1.

1903.

No. 1 of 1903.]

[Promulgated 9th January, 1903.

ORDINANCE†

TO ESTABLISH A CODE OF CRIMINAL PROCEDURE.

Assented to 7th January, 1903.

WHEREAS it is desirable to consolidate and amend the law relating to Criminal Procedure ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

CHAPTER I.

PRELIMINARY.

Short title.

1. This Ordinance may be cited as " The Criminal Procedure Code 1903 " and is hereinafter referred to as " this Code ".

* It shall come into force on the first day of February 1903 and shall apply to all proceedings in respect of offences other than offences prosecuted summarily before inferior courts commenced on or after that day at whatever time the offences may have been committed. It shall also as far as may be apply to proceedings pending on that day.

Laws repealed.

2. The laws mentioned in Schedule A to this Code and so much of any other law as may be repugnant to or inconsistent with the provisions of this Code are hereby repealed.

Interpretation of terms.

3. In this Code the following words and expressions are used in the following senses unless a different meaning appears from the context :

‡ " Circuit Court " shall mean a Circuit Court for any district in this Colony to be hereafter established and shall unless the contrary intention appears include the Witwatersrand High Court.

" Company " means an incorporate company.

" Justice " denotes a justice of the peace.

" Money " includes all coined money whether current in the Transvaal or not and all bank-notes bank-drafts cheques orders warrants or authorities for the payment of money.

" Offence " is an act or omission punishable by law.

† See Ordinance No. 10, 1903 ; Ordinance No. 47, 1904 ; Ordinance No. 1, 1905 ; Act. No. 18, 1907 ; Act No. 38, 1909 ; Act No. 34, 1907, section *six* (1), as to fieldcornets' powers and duties.

* See Ordinance No. 10 of 1903, section *one*.

‡ See Ordinance No. 10 of 1903, section *three*.

“Peace officer” includes any magistrate or justice of the peace the sheriff deputy-sheriff and any officer non-commissioned officer constable or trooper of the Town Police or of the South African Constabulary or any member of any other police force established in this Colony the keeper and guards of any prison inspector of natives pass officer and any person employed for the preservation and maintenance of the public peace or for the service or execution of civil process and any person specially required by any warrant lawfully issued by any judge magistrate or justice of the peace to perform any duty.

“Person” and “owner” and other like terms when used with reference to property or acts include corporations of all kinds and any other associations of persons capable of owning or holding property or doing acts; they also when relating to property include His Majesty.

“Police officer” includes any officer non-commissioned officer constable or trooper of police.

“Property” includes everything animate or inanimate corporeal or incorporeal capable of being the subject of ownership.

“Public service.” A person employed in the “public service” includes any person who is by law authorized or required to execute a particular duty towards the public whether he acts gratuitously or not whether he is paid by salary or fees and whether he exercises any other profession or follows any other calling besides the performance of his public duties.

“Summary conviction” means summary conviction before a court of resident magistrate or other inferior court exercising summary jurisdiction.

“Superior court” or “court” means the Supreme Court the Witwatersrand High Court or any Circuit Court. Every other court is an inferior court.

“Valuable security” includes any document which is the property of any person and which is the evidence of the ownership of any property or of the right to recover or receive any property.

4. The jurisdiction of courts of justice with respect to the trial of persons accused of committing any offence is set forth in the laws relating to the constitution and jurisdiction of such courts respectively. Jurisdiction of superior courts.

5. The procedure upon the prosecution of offenders in order to their summary conviction and for enforcing summary convictions and orders made by inferior courts upon such prosecutions is set forth in the laws relating to such courts their powers and authorities. Procedure in inferior courts.

CHAPTER II.

PUBLIC PROSECUTIONS.

Attorney-General vested with right of prosecuting all crimes.

Prosecution by Attorney-General in person or by duly appointed qualified substitute.

Magistrate may appoint prosecutor in certain cases.

Attorney-General's power of stopping prosecutions.

Power of ordering liberation of persons committed for further examination sentence or trial.

Neither acquittal nor conviction a bar to civil action for damages.

Private prosecution on refusal of Attorney-General to prosecute.

6. The Attorney-General is vested with the right and entrusted with the duty of prosecuting in the name and on behalf of the King all offences committed in or triable by the courts of this Colony.

This right and power of prosecution in the Attorney-General is absolutely under his own management and control.

7. The Attorney-General may appear personally or by any other person appointed by him to conduct any prosecution or examination before any court of this Colony.

8. If through any cause whatsoever the person so appointed to conduct the prosecution before any court is unable to act or in case no person shall have been appointed the magistrate of the district in which such court is held shall by writing under his hand appoint some fit and proper person to prosecute in such cases as shall be triable before such court.

9. The Attorney-General may at any time before conviction stop all prosecutions commenced by him or by any other person charged with the prosecution of criminal cases; but in the event of the accused having been already arraigned upon any charge he shall be entitled to a verdict of acquittal in respect of such charge.

10. The Attorney-General may unless he has been served with notice by some private person entitled to prosecute under the provisions of this Code that such person intends to prosecute in case the Attorney-General declines to do so order the liberation of any person committed to prison for further examination sentence or trial; for which liberation a writing setting forth that the Attorney-General sees no grounds for prosecuting such person and subscribed by him shall be a sufficient warrant.

11. Neither conviction nor acquittal following on any prosecution is a bar to a civil action for damages at the instance of any person who may have suffered any injury from the commission of any alleged offence.

CHAPTER III.

PRIVATE PROSECUTIONS.

12. In all cases where the Attorney-General declines to prosecute for any alleged offence it shall be competent for any private party who can show some substantial and peculiar interest in the issue of the trial arising out of some injury which he individually has suffered by the commission of any such alleged offence to prosecute in any court competent to try the same the person alleged to have committed such offence.

13. The following persons also possess this right of prosecution :

(a) a husband in respect of offences committed against his wife ;

(b) the legal guardians or curators of minors or lunatics in respect of offences committed against their wards ;

(c) the wife or children or where there is no wife or child any of the next-of-kin of any deceased person in respect of any offence by which the death of such person is alleged to have been caused.

What other persons entitled to prosecute.

14. Where in virtue of the right of prosecution hereinbefore given to private parties any private party desires to prosecute any person for whose liberation from prison any warrant has been issued by the Attorney-General for any offence it shall be competent for such private party to apply to the Supreme Court or in case such court shall not then be sitting to any judge thereof for a warrant for the further detention of such person and such court or judge shall make such order as to it or him seems right under the circumstances.

Private prosecutor must apply to court for warrant.

15. It shall not be competent for any private party to obtain the process of any court for summoning any party to answer any indictment unless such private party shall produce to the officer authorized by law to issue such process a copy of the charge or indictment having endorsed thereon a certificate signed by the Attorney-General that he has seen the charge or indictment and declines to prosecute at the public instance ; and in every case in which the Attorney-General declines to prosecute he shall at the request of the party intending to prosecute grant the certificate above mentioned on every indictment submitted to him by such private party.

Certificate of Attorney-General that he declines to prosecute.

16. No private party shall take any proceedings by virtue of the powers conferred upon him by this chapter until he shall :

(a) have entered into a recognizance in the sum of fifty pounds with two sufficient securities in the sum of twenty-five pounds each (to be approved by the Registrar of the said Supreme Court) to prosecute the charge against the accused to a conclusion without delay ;

(b) have given security in such amount and in such manner as the said Registrar may direct that he will pay the accused such costs incurred by him in respect of his defence to the charge as the court before which the case is tried may order him to pay.

Recognizances to be entered into by private prosecutor.

17. A private prosecution shall be proceeded with in the same manner as if such prosecution were being conducted at the public instance.

Mode of conducting private prosecutions.

Power of magistrate to stop summary prosecution and necessity for the production of certificate in cases of magnitude.

*18. Where in the course of the proceedings in any summary prosecution at the instance of a private party it shall appear that the offence complained of is from its nature or magnitude one which ought not to be permitted to be prosecuted at the instance of the private party until the Attorney-General or other officer who is lawfully entitled to prosecute at the public instance in such court shall have exercised his discretion whether he will prosecute the offender at the public instance the magistrate shall stop all further proceedings in such case until the party prosecuting shall produce to such magistrate a certificate under the hand of and subscribed by the Attorney-General or such officer as aforesaid that he has seen the complaint and declines to prosecute at the public instance for the offence therein set forth.

Competency of Attorney-General to take up and conduct prosecution at the public instance in all cases of summary private prosecution. Costs of private prosecution.

19. In every case of any summary prosecution at the instance of a private party it shall be lawful and competent for the Attorney-General or other officer who by law is entitled to prosecute at the public instance in such court to apply by motion to the magistrate to stop all further proceedings in such case in order that a prosecution for the same offence may be instituted at the public instance in some other form or court and such magistrate shall in every such case be bound to make an order in the terms of such motion.

20. Where a person prosecuted at the instance of a private party is acquitted the court in which the prosecution was brought may adjudge the prosecutor to pay to the party prosecuted the whole or any part of the expenses including the costs both before and after committal which may have been occasioned to him by the prosecution.

CHAPTER IV.

PRESCRIPTION OF OFFENCES.

Prosecution for murder not barred by lapse of time for other offences barred by lapse of twenty years.

21. The right of prosecution for the crime of murder shall not be barred by any lapse of time; but the right of prosecution for any other offence whether at the instance of the public prosecutor or of the private party injured shall unless some other period is expressly provided by law be barred by the lapse of twenty years from the time when the offence was committed.

CHAPTER V.

ARRESTS.

A.—Without Warrant.

Arrest and verbal order to arrest for offences committed in the presence of judges magistrates and justices of the peace.

22. It shall be lawful for any judge of the Supreme Court or any magistrate or justice who has knowledge of any offence by seeing it committed himself to arrest the offender or by a verbal order to authorize others so to do who shall be authorized and required to follow such offender if he fly and to execute the said order on him out of the presence of such judge of the Supreme Court magistrate or justice.

* Cf. Rule sixty-three of Magistrates Court Rules in Proc. Trans. No. 21 of 1902, Second Schedule.

23. The sheriff and his deputies the commissioner of police and his deputies and all police officers and other peace officers and other officers of the law proper for the execution of criminal warrants are hereby authorized and required to arrest without warrant every person who shall commit any offence in their presence; as also every person whom they shall have reasonable grounds to suspect of having committed any of the offences mentioned in Schedule B to this Code; as also every person whom they shall see engaged in committing any affray or whom they shall find attempting to commit an offence or clearly manifesting an intention so to do.

Arrest by sheriff or police officer for offences committed in their presence and on reasonable grounds of suspicion as to certain offences.

24. Any peace officer may without any order or warrant arrest:

When peace officer may arrest without warrant.

(a) any person having in his possession any implement of housebreaking without lawful excuse the burden of proving which excuse shall lie on such person;

**(b)* any person in whose possession anything is found which may reasonably be suspected to be stolen property or property dishonestly obtained and who may reasonably be suspected of having committed an offence with respect to such thing;

(c) any person who obstructs a police officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody;

(d) any person reasonably suspected of being a deserter from His Majesty's Army or Navy;

(e) any person who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any act committed at any place out of this Colony which if committed in this Colony would have been punishable as an offence and for which he is under any law relating to extradition or under the Fugitive Offenders Act 1881 or otherwise liable to be apprehended or detained in custody in this Colony;

**(f)* any person being or loitering in any place by night under such circumstances as to afford reasonable grounds for believing that he has committed or is about to commit an offence.

†*(g)* any person against whom a reasonable suspicion exists that he has been guilty of any such offence as is mentioned in sections forty-six forty-eight and fifty-seven of the Liquor Licensing Ordinance 1902 or in sub-section (7) of section four of the Liquor Licensing Further Amendment Ordinance 1903.

25. Every private person in whose presence any of the offences mentioned in Schedule B to this Code is committed or attempted to be committed or who has knowledge that any such offence has been recently committed is authorized to arrest or

Arrest by private person for certain offences committed in his presence.

* Cf. Ord. No. 26 of 1904, section *seven*.

† Sub-section *(g)* added by Ordinance No. 47, 1904, section *one*.

forthwith to pursue the offenders; every other private person to whom the purpose of such pursuit shall be made known is authorized to join and assist in the same. And every private person who on such pursuit being made shall come up with any person having the property which has been stolen or otherwise unlawfully obtained in his possession or with any person whose traces have conducted his pursuers from the place where the offence was committed to the place where he shall be overtaken is hereby authorized to arrest such person having such property stolen or otherwise unlawfully obtained in his possession or being traced as aforesaid.

Arrest by private person in case of an affray.

26. Every private person is authorized to arrest any person whom he may see engaged in committing an affray in order to prevent such person from continuing the affray and to deliver him over to be dealt with according to law.

In case of offence committed by night.

27. Any person who finds another person by night committing any offence may arrest him without a warrant.

Owners of property may arrest in certain cases.

28. The owner of any property on or in respect to which any person is found committing an offence or any person authorized by such owner may arrest without warrant the person so found.

Arrest by private person for certain offences on reasonable suspicion but at his own peril.

29. It shall be lawful for any private person to arrest any other person upon reasonable suspicion that he has committed any of the offences specified in Schedule B to this Code; but every arrest or attempt to arrest made by any private person upon suspicion shall be made at his own peril in respect of any damages which may be claimed for wrongful arrest.

Arrest of persons offering stolen property for sale, etc.

30. Where any person may without warrant arrest another for committing an offence such person may also arrest without warrant any person who offers to sell pawn or deliver to him any property which on reasonable grounds he believes to have been acquired by such person by means of any such offence.

B.—With Warrant.

Warrant of apprehension by judge magistrate or justice.

31. It shall be lawful for any judge of the Supreme Court or any magistrate or justice to grant a warrant for the apprehension of any person on a written application setting forth the offence alleged to have been committed and that from information taken upon oath there are reasonable grounds of suspicion against the person for whose arrest the warrant is sought subscribed by the Attorney-General or by the commissioner, of police or by the public prosecutor of the district; or upon the information to the like effect of any person made on oath before the judge or magistrate or justice granting the warrant; provided always that it shall not be lawful for any magistrate or justice to grant any such warrant except when the offence charged has been committed within the jurisdiction of such magistrate or justice or except when the person against whom the warrant is issued shall at the

time when such warrant is so issued be known or suspected on reasonable grounds to be within the jurisdiction of the magistrate or justice issuing such warrant. Every such warrant may be granted or issued on a Sunday as on any other day and shall remain in force until it is cancelled by the person who issued it or until it is executed.

32. Every magistrate and every justice on production to him of a warrant or summons or other process relating to any criminal matter issued by any other magistrate or justice is bound to grant his concurrence to it by an endorsement thereof after which the warrant summons or other process may be executed within the local limits of the jurisdiction of the magistrate or justice so endorsing it; provided always that whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the magistrate or justice within the local limits of whose jurisdiction the warrant summons or other process is to be executed, will prevent such execution the officer of the law to whom it is directed may execute the same without such endorsement in any place beyond such local limits.

Endorsement
of warrants.

33. Every officer of the law within this Colony proper for the execution of criminal warrants is hereby authorized and required to obey and execute every such warrant issued by any of the judges of the Supreme Court: and every such officer of the law is hereby authorized and required to obey and execute every such warrant issued or endorsed by the magistrate or any justice of the district in which such officer of the law has been appointed to act; and every criminal warrant issued by any of the judges of the Supreme Court or any magistrate or justice shall have effect and when endorsed as in the last preceding section provided if such endorsement is necessary may lawfully be executed anywhere within the limits of the Colony by any officer of the law or by any private person to whom it shall be directed.

Execution of
warrants.

34. Every one duly authorized to execute a warrant to arrest who thereupon arrests a person believing in good faith and on reasonable and probable grounds that he is the person named in the warrant shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the person arrested had been the person named in the warrant. Every one called on to assist the person making such arrest and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant was issued and every gaoler who is required to receive and detain such person shall be protected to the same extent and subject to the same provisions as if the arrested person had been the person named in the warrant.

Arresting
the wrong
person.

35. Every one acting under a warrant or process which is bad in law on account of some defect in substance or in form apparent on the face of it if he in good faith and without culpable

Irregular
warrant or
process.

ignorance and negligence believes that the warrant or process is good in law shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the warrant or process were good in law and ignorance of the law shall in such case be an excuse; provided that it shall be a question of law whether the facts of which there is evidence may or may not constitute culpable ignorance or negligence in his so believing the warrant or process to be good in law.

Saving of other powers of arrest.

36. Nothing in this Code shall take away or diminish any authority given by any law in force for the time being to arrest detain or put any restraint on any person.

Tenor of warrant.

37. Every warrant issued as hereinbefore prescribed shall be to apprehend the person described therein and to bring him before a magistrate or justice for examination. Every officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested and if so required shall show him the warrant; when the arrest is made without warrant the person arrested shall likewise be notified of the cause of arrest.

C.—General.

Assistance by private persons called on by officers of the law.

38. Every male inhabitant between the ages of sixteen and sixty when called upon by any officer of the law is authorized and required to assist such officer in making any arrest which by law such officer is authorized to make of any person charged with or suspected of the commission of any offence. And any such person who shall refuse without sufficient excuse to do so shall on conviction be liable to a fine not exceeding thirty pounds or to imprisonment for any period not exceeding three months.

Breaking open of doors after failure in obtaining admission for the purpose of arrest or search.

39. It shall be lawful for any peace officer or private person who shall by law be authorized or required to arrest any person known or suspected to have committed any offence for that purpose to break open the doors and windows of and to enter and search any house or place in which such person is known or suspected to be; provided always that such officer or other person as aforesaid shall have previously failed to obtain admission after having audibly demanded the same and notified the purpose for which he seeks to enter such house.

Arrest how made.

40. In making an arrest the police or other peace officer or other person authorized to arrest shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action.

Resisting arrest.

41. When any peace officer who by the provisions of this Code is authorized and required to arrest or assist in arresting any person who has committed or is on reasonable grounds suspected of having committed any of the offences mentioned in Schedule B to this Code shall attempt to make such arrest and the person so attempted to be arrested shall fly or resist and cannot

be apprehended and prevented from escaping by other means than by such officer killing the person so flying or resisting such homicide shall be deemed in law justifiable homicide.

Nothing in this section shall give a right to cause the death of a person who is not accused of or suspected of having committed one of the offences mentioned in Schedule B to this Code the offence of theft being limited for the purposes of this section to theft in a dwelling-house between sunset and sunrise and theft of stock.

42. If a person in lawful custody escapes or is rescued the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in this Colony.

Power to retake on escape.

43. When any person is arrested under any of the provisions of this Code the person making the arrest shall with all convenient speed carry the prisoner before the nearest magistrate or justice within the district in which the arrest is made unless such arrest is made by virtue of a warrant in which the magistrate or justice before whom the prisoner is to be brought is named in which case the prisoner shall be brought before such magistrate or justice.

Prisoner to be carried before the magistrate named in the warrant or if the warrant be general to the nearest magistrate.

44. Whenever any person is arrested by a police officer under any of the provisions of this Code the officer making the arrest may search such person and place in safe custody all articles other than necessary wearing apparel found on him; whenever it is necessary to cause a woman to be searched the search shall be made by another woman with strict regard to decency.

Prisoner may be searched and his goods detained.

CHAPTER VI.

SEARCH WARRANTS, SEIZURE AND DETENTION OF PROPERTY CONNECTED WITH OFFENCES, CUSTODY OF WOMEN UNLAWFULLY DETAINED FOR IMMORAL PURPOSES.

45. If it appears to a magistrate or justice on complaint made on oath that there are reasonable grounds for suspecting that there is in any house tent vehicle vessel receptacle or place within the jurisdiction of the magistrate or justice to whom the information is transmitted or before whom the information is made

Search warrants.

(a) stolen property or anything with respect to which any offence has been or is suspected on reasonable grounds to have been committed; or

*(b) anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of any such offence; or

(c) anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any such offence;

he may issue his warrant directing a police officer or police officers named therein or all police officers to search such house tent vehicle

* See also Law No. 6 of 1889, *sec. six*, as to seizure of gambling requisites found in gaming houses.

vessel receptacle or place and to seize any such thing if found and to take it before a magistrate to be dealt with according to law.

Any such warrant shall be executed by day unless the justice or magistrate by the warrant specially authorizes it to be executed by night in which case it may be so executed. Such warrant may be issued and executed on Sunday as on any other day.

Search by
police with-
out warrant.

46. If a police officer above the rank of sergeant believes on reasonable grounds that the delay in obtaining a search warrant would defeat the object of the search he may himself search or by an order in writing direct some other police officer not below the rank of sergeant to search without warrant for any such thing as in the last preceding section mentioned and to seize such thing if found and take it before a magistrate.

Such search must as far as possible be made in the day time and in the presence of two or more respectable inhabitants of the locality in which the search is made.

Property
found on
offenders on
arrest.

47. When on the arrest of any person on a charge of an offence relating to property the property in respect of which the offence is alleged to be committed is found in his possession the person arresting him may take such property before a magistrate to be dealt with according to law.

Judge or
magistrate
may order
seizure of
books or
documents in
possession of
accused in
criminal
proceedings.

*48. If it shall appear from information on oath that any person is in possession of any book of account or document or any other thing whatsoever which is necessarily required in evidence in any criminal proceeding it shall be lawful for any judge or magistrate presiding at such proceeding to issue an order directing the officer to whom such order is addressed to take possession of such book or document or thing and to hand it over to such person as may be named in such order; and thereupon such officer may lawfully execute such order and any person who shall resist or hinder or shall aid incite or encourage any other person to resist or hinder such officer in executing the same shall upon conviction be liable to imprisonment with or without hard labour for any period not exceeding twelve months.

Seizure of
counterfeit
coin, etc.

†49. If any person finds in any place whatever or in the possession of any person who has the same without lawful authority or excuse

- (a) any counterfeit coin or any forged bank-note or bank-note paper;
- (b) any tool instrument or machine adapted and intended for making any such counterfeit coin or forged bank-note or bank-note paper;
- (c) any filings or clippings of gold or silver or any gold or silver in bullion dust solution or any other state which may be suspected on reasonable grounds to have been obtained

* But see also Proc. (Trans.) No. 16 of 1902, sec. 29, as to original documents in the custody of a Government officer.

† See Ord. No. 26 of 1904, sec. 3 and secs. 18 to 28 inclusive.

by dealing with any current gold or silver coin in such a manner as to diminish its weight ;
the person who finds the same may seize the thing or things found and take the same forthwith before a magistrate to be dealt with according to law.

50. When any thing is seized or taken under the provisions of this Code the person seizing or taking it is required forthwith to carry it before a magistrate. Disposal of property seized.

The magistrate may cause the thing so seized or taken to be detained in such custody as he may direct taking reasonable care for its preservation until the conclusion of any investigation that may be held in respect to it ; and if any person is committed for trial for any offence committed with respect to the thing so seized or taken or committed under such circumstances that the thing so seized or taken is likely to afford evidence at the trial he may cause it to be further detained in like manner for the purpose of being produced in evidence at such trial.

Whenever property is seized under this section marks of identification when practicable should be placed thereon by the person seizing the same at the time of seizure or as soon thereafter as can conveniently be done.

If no person is so committed the magistrate is required to direct that the thing be returned to the person from whose possession it was taken unless he is authorized or required by law to dispose of it otherwise.

If the thing so seized or taken is anything forged or counterfeit or is of such a nature that a person who has it in his possession without lawful authority or excuse is guilty of an offence then if any person is committed for trial for any offence committed with respect to it or committed under such circumstances as aforesaid and is convicted the court before which he is convicted or in any other case any judge or magistrate may cause it to be defaced or destroyed or if of any value sent to the Colonial Treasurer as soon as it appears that it will not be required or further required in evidence against the person who had it in his possession.

*51. If any offensive weapons believed to be dangerous to the public peace are seized under a search warrant the same shall be kept in safe custody in such place as the magistrate directs unless the owner thereof proves to the satisfaction of such magistrate that such offensive weapons were not kept for any purpose dangerous to the public peace and any person from whom any such offensive weapons are so taken may if the magistrate upon whose warrant the same were seized upon application made for that purpose refuses to restore the same apply to a judge of the Supreme Court for the restitution of such offensive weapons upon giving ten days' notice of such application to such magistrate and Offensive weapons seized under search warrants.

* Cf. Ord. No. 20 of 1905, sec. 9-

such judge shall make such order for the restoration or safe custody of such offensive weapons as upon such application appears to him to be proper.

Forfeiture of goods bearing forged trade or false merchandise marks.

52. If goods or things in respect or by means of which it is suspected that an offence relating to the forgery of trade marks or fraudulent marking of merchandise has been committed are seized under a search warrant and brought before a magistrate such magistrate shall determine summarily whether the same are not forfeited under the laws relating to the forgery of trade marks or fraudulent marking of merchandise; and if the owner of any goods or things which if the owner thereof had been convicted would be forfeited under the aforesaid laws is unknown or cannot be found an information or complaint may be laid for the purpose only of enforcing such forfeiture and the said magistrate may cause notice to be advertised stating that unless cause is shown to the contrary at the time and place named in the notice such goods or things will be declared forfeited; and at such time and place the magistrate unless the owner or any person on his behalf or other person interested in the goods or things shows cause to the contrary may declare such goods or things or any of them forfeited.

Women detained for immoral purposes.

*53. If it appears to a magistrate on complaint made on oath by a parent husband relative or guardian of a woman or girl or any other person who in the opinion of the magistrate is acting in good faith in the interest of a woman or girl that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within his jurisdiction he may issue a warrant directed to a police officer and authorizing him to search for such woman or girl and when found to take her to and detain her in a place of safety until she can be brought before a magistrate; and the magistrate before whom she is brought may cause her to be delivered up to her parents husband relatives or guardians or otherwise dealt with as the circumstances may permit and require.

The magistrate issuing the warrant may by warrant direct any person accused of so unlawfully detaining the woman or girl to be arrested and brought before him or some other magistrate having jurisdiction and may direct proceedings to be taken for punishing him according to law.

A woman or girl is deemed to be unlawfully detained for immoral purposes if she

- (a) being under the age of sixteen years is so detained; or
- (b) being of or over the age of sixteen years and under the age of eighteen years is so detained against her will or against the will of her father or mother or husband or of any other person who has the lawful care or charge of her; or

* See Ordinance No. 46, 1903, section *eighteen*.

(c) being of or above the age of eighteen years is so detained against her will ;
and in any such case is detained by any person in order to her being unlawfully carnally known by any man whether a particular man or not.

A person authorized by warrant under this section to search for a woman or girl may enter if need be by force any house or other place specified in the warrant and may remove the woman or girl therefrom.

The warrant must be executed by the police officer mentioned in it who must unless the magistrate otherwise directs be accompanied by the parent husband relative guardian or other person by whom the complaint is made if such person so desires.

CHAPTER VII.

PREPARATORY EXAMINATIONS.

54. Any person charged with the prosecution of criminal cases on receiving information of any offence having been committed within his district (unless it shall plainly appear to be proper for the cognizance of a court of summary jurisdiction) shall apply for a summons for the attendance of or for a warrant for the apprehension of any person who from information upon oath may be reasonably suspected of having committed the said offence unless such person is already in custody or has been summoned to appear to undergo a preparatory examination before the same or some other magistrate. Upon such application the magistrate may if he thinks fit issue his warrant to apprehend the person charged or proceed by summons and issue a summons against him ; provided that notwithstanding the issue of a summons a magistrate may issue his warrant at any time either before or after the time mentioned in the summons for the appearance of the accused.

Preparatory
examination

55. When the accused is summoned the summons shall be issued by a magistrate and shall be directed to the accused and shall state shortly the matter of complaint and shall require him to appear at a time and place to be therein mentioned. No summons shall be signed in blank.

Contents of
summons.

Every summons shall be served by the person authorized to serve criminal process in the Magistrate's Court or other duly authorized person upon the person to whom it is directed either by delivering it to him personally or if such person cannot conveniently be met with by leaving it for him at his place of business or most usual or last known place of abode with some inmate thereof.

The service of any such summons may be proved by the testimony upon oath of the person effecting the same or by the affidavit of such person purporting to be made before a magistrate or justice or by due return of service under his hand.

Inquiry by
magistrate.

56. When the accused is before a magistrate having jurisdiction whether voluntarily or upon summons or after being apprehended with or without a warrant or while in custody for the offence of which he is accused or any other offence the person charged with the prosecution of criminal cases shall institute a preparatory examination before the magistrate and the magistrate shall proceed to inquire into the matters charged against such person in the manner hereinafter defined.

Proceedings
when
accused is
insane.

57. If at the commencement or during the course of a preparatory examination the accused appears to be insane the magistrate holding the inquiry shall proceed in the manner laid down in Part II of the Lunacy Proclamation 1902.

Irregularities
not to affect
the pro-
ceedings.

58. No irregularity or defect in the substance or form of the summons or warrant or in the manner of arrest and no variance between the charge contained in the summons or warrant and the charge contained in the information or between either and the evidence adduced on the part of the prosecution at the inquiry shall affect the validity of any proceeding at or subsequent to the hearing.

The magis-
trate may
adjourn the
case.

59. If it appears to the magistrate that the accused has been deceived or misled by any such variance in any summons or warrant he may adjourn the hearing of the case to some future day and in the meantime may remand such person or admit him to bail as hereinafter mentioned.

Magistrate
may summon
witnesses.

60. If it appears to the magistrate that any person being or residing in this Colony is likely to give material evidence on such inquiry either for the prosecution or for the accused he may whether requested by the parties or not issue a summons under his hand requiring such person to appear before him at a time and place mentioned therein to give evidence respecting the charge and to bring with him any document or thing in his possession or under his control relating to or necessary or considered desirable for the purpose of investigating such charge.

If the magistrate when requested deems it unnecessary or useless to issue such process he shall decline to do so recording his reasons.

Summons
how served.

61. Every such summons shall be served in the manner provided in section *fifty-five*.

Warrant to
be issued
when witness
fails to attend.

62. If any one to whom such last-mentioned summons is directed does not appear at the time and place appointed thereby and no just excuse is offered for such non-appearance then (after proof upon oath that such summons has been served as aforesaid or that the person to whom the summons is directed is evading service) the magistrate before whom such person ought to have appeared being satisfied by proof on oath that he is likely to give material evidence may issue a warrant under his hand to bring such person at a time and place to be therein mentioned before him or any other magistrate to testify as aforesaid.

Such warrant may be executed anywhere within the local limits of the jurisdiction of the magistrate by whom it is issued or if necessary endorsed as provided in section *thirty-two* and executed anywhere in this Colony.

If a person summoned as a witness under the provisions of this part of this Code is brought before a magistrate on a warrant issued in consequence of refusal to obey the summons such person may be detained on such warrant before the magistrate who issued the warrant or in the prison or lock-up or any other place of confinement or in the custody of the person having him in charge with the view to secure his presence as a witness on the day fixed for the examination or in the discretion of the magistrate such person may be released on recognizance with or without sureties conditioned for his appearance to give evidence as therein mentioned and to answer for his default in not attending upon the said summons as for contempt and the magistrate may in a summary manner examine into and dispose of the charge of contempt against such person who if found guilty thereof may be fined or imprisoned or both such fine not to exceed twenty-five pounds and such imprisonment to be without hard labour and not to exceed the term of one month and may also be ordered to pay the costs incident to the service and execution of the said summons and warrant and of his detention in custody. Any person fined or imprisoned under this section shall have the right of appeal as in the case of a summary conviction.

63. No prepayment or tender of expenses to witnesses shall be necessary in the case of inquiries into and trials of offences under this Code.

Tender of witness' expenses not necessary.

64. Whenever any person appearing either in obedience to a summons or by virtue of a warrant or being present and being verbally required by the magistrate to give evidence refuses to be sworn or having been sworn refuses to answer such questions as are put to him or refuses or neglects to produce any document or thing which he is required to produce without in any such case offering any just excuse for such refusal such magistrate may adjourn the proceedings for any period not exceeding eight clear days and may in the meantime by warrant commit the person so refusing to prison unless he sooner consents to do what is required of him. If such person upon being brought up upon such adjourned hearing again refuses to do what is so required of him the magistrate if he sees fit may again adjourn the proceedings and commit him for the like period and so again from time to time until such person consents to do what is required of him.

Witness refusing to be examined or to produce may be committed.

Nothing in this section shall prevent such magistrate from sending any case for trial or otherwise disposing of the same in the meantime according to any other sufficient evidence taken by him.

No person shall be bound to produce any document or thing not specified or otherwise sufficiently described in the summons unless he actually has it in court.

When a trial in an inferior court should be stopped and a preparatory examination should be instituted.

65. When in the course of any trial in any inferior court it shall appear that the offence under trial is from its nature or magnitude only subject to the jurisdiction or more proper for the cognizance of a superior court then the magistrate before whom such inferior court is held shall either of his own motion or on the application of the public prosecutor for the district stop the trial of the person accused and the proceedings shall thereupon be those of a preparatory examination. It shall not be necessary for the magistrate to recall any witness who has already given evidence at the trial but the magistrate's record of the evidence so given certified by him to be correct shall for all purposes whatsoever have the same force and effect and shall be receivable in evidence in the same circumstances as the depositions made in the course of a preparatory examination in the manner provided in the next succeeding section; provided that as often as it shall appear to the magistrate himself or be made to appear to him either by the prosecutor or by the accused that the ends of justice might be served by having a witness already examined recalled for further examination then such witness shall be summoned and examined accordingly. The examinations so taken shall be recorded in the manner hereinafter directed as to other examinations.

Evidence on oath at preparatory examinations.

66. All preparatory examinations shall except when an oath is by law dispensed with be taken upon oath and every witness before giving his evidence shall make oath before the magistrate by whom he is to be examined that in the whole of his deposition he will tell the truth the whole truth and nothing but the truth and each witness shall be examined apart from the others. The depositions shall be taken down in writing in the presence of the accused or if taken in his absence shall be afterwards read over to him in the presence of the witnesses making the same whom he shall be entitled to cross-examine; and in such case the prosecutor may re-examine them and such depositions shall be signed by the magistrate and by the witnesses and in case of their incapacity or refusal then the same shall be signed by two persons in whose presence the same were taken.

Admissibility in criminal cases of depositions at preparatory examination of witness since deceased or kept away by the contrivance of the prisoner.

67. The deposition of any witness taken upon oath before any magistrate in the manner directed and required by the last preceding section in the presence of any person who has been brought before such magistrate on a charge of having committed any offence shall be admissible in evidence on the trial of any such person for such offence or for any offence for which he may be indicted by the Attorney-General on the preparatory examination; provided it shall be proved on oath to the satisfaction of the court that the deponent is dead or is incapable of giving evidence or that

he is too ill to attend or that he is kept away from the trial by the means and contrivance of the prisoner and that the deposition offered in evidence is the same which was sworn before the magistrate without any alteration ; provided always that it shall appear on the record or be proved to the satisfaction of the court that the person accused by himself his counsel attorney or agent had a full opportunity of cross-examining the witness. The evidence of a witness given at a former trial shall under like circumstances be admissible on any subsequent trial upon the same charge.

Where the witness cannot be found after diligent search or cannot be compelled to attend the court may in its discretion allow his depositions to be read as evidence at the trial subject to the conditions hereinbefore mentioned.

68. Every magistrate before whom any preparatory examination is taken may lawfully require any witness either alone or together with one or more sufficient sureties to the satisfaction of the said magistrate to enter into a recognizance under condition that the said witness shall at any time within twelve months from the date thereof appear and give evidence at the trial of the said case upon being served with a summons at some certain place to be selected by such witness ; and if any witness being so required to enter into any such recognizance shall refuse or fail so to do it shall be lawful for the said magistrate to commit and detain in prison the witness so refusing or failing until such recognizance shall have been entered into as aforesaid.

Recognizance of witness to appear on trial.

Every recognizance so entered into shall specify the name and surname of the person entering into it his occupation or profession if any the place of his residence and the name and number if any of the street in which it may be and whether he is owner or tenant thereof or a lodger therein.

All such recognizances shall be liable to be estreated in the same manner as any forfeited recognizance is by law liable to be estreated by the court before which the principal party thereto was bound to appear.

69. Whenever any person is bound by recognizance to give evidence or is likely to give material evidence before a magistrate or any criminal court in respect of any offence any magistrate or judge of the Supreme Court if he sees fit upon information being made in writing and on oath that such person is about to abscond or has absconded may issue his warrant for the arrest of such person ; and if such person is arrested any magistrate or judge upon being satisfied that the ends of justice would otherwise be defeated may commit such person to prison until the time at which he is required to give evidence unless in the meantime he produce sufficient sureties ; but any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued.

Absconding witness may be arrested.

Witness refusing to enter into recognizance.

70. Any witness who refuses to enter into any such recognizance as aforesaid may be committed by the magistrate holding the examination by warrant to the prison for the place where the trial is to be held there to be kept until after the trial or until the witness enters into such a recognizance as aforesaid before a magistrate having jurisdiction in the place where the prison is situated; provided that if the accused is afterwards discharged any magistrate having jurisdiction shall order such witness to be discharged.

Accused at the close of examination in support of the charge to be cautioned that he is not obliged to make any statement incriminating himself.

71. After the examination of the witnesses in support of the charge in the presence of the accused the magistrate shall ask the said accused what he will say in answer to the charge against him; and shall at the same time caution him that he is not obliged to make any statement but that what he shall say may be used in evidence against him. The accused may then or at any later stage of the proceedings make any statement or statements which shall be taken down in writing in so far as the same may be relevant to the charge and the same after being read over to him shall be subscribed by him if he will subscribe the same and also by the magistrate and shall be received in evidence before any court or tribunal upon its mere production without further proof thereof unless it shall be proved that such statement was not in fact duly made or that the signatures or marks thereto are not in fact the signature or marks of the persons whose signatures or marks they purport to be. After the accused's statement (if any) has been made as aforesaid he may call and examine witnesses in his defence.

Nothing in this section contained shall prevent the magistrate receiving further evidence for the prosecution after hearing any evidence given on behalf of the accused or re-opening the examination.

Admissions may be given in evidence.

72. Nothing herein contained shall prevent any prosecutor from giving in evidence any admission or confession or other statement made at any time by the accused which by law would be admissible against him.

If accused at preparatory examination admits previous conviction his admission to be reduced to writing.

73. As often as it shall appear at any preparatory examination that the accused has been previously convicted of some crime or offence the presiding magistrate shall inform the accused of the particulars of such alleged previous conviction and shall call upon him to admit or deny that he was so previously convicted and if the accused shall admit that he was so previously convicted his admission shall be reduced to writing and subscribed by him and also by the magistrate; and any such written admission purporting to be so made and subscribed shall be received in evidence as proof of such previous conviction before any court or tribunal upon its mere production unless it shall be proved that such admission was not in fact duly made or that the signatures or marks thereto are not in fact the signatures or marks of the persons whose signatures or mark they purport to be.

74. When all the witnesses on the part of the prosecution and the accused have been heard the magistrate shall if upon the whole of the evidence he is of opinion that no sufficient case is made out to put the accused upon his trial discharge him; and in such case any recognizances taken in respect of the charge shall become void unless within twenty-one days the Attorney-General shall as hereinafter provided order that the accused be committed for trial or that a further examination shall take place.

Discharge of accused when no sufficient case is made out.

Nothing in this section shall be deemed to prevent a magistrate from discharging the accused at any previous stage of the case if for reasons to be recorded by such magistrate he considers the charge to be groundless.

75. When there shall appear to any magistrate sufficient grounds for putting any person brought before him on trial for any offence the magistrate shall grant a warrant to commit him to the prison of the district there to be detained till brought to trial for the said offence or till liberated in due course of law; which warrant shall clearly express the offence with which the prisoner is charged.

Committal of accused for trial.

A magistrate may make an order of committal or discharge although part of the examination has been taken by another magistrate and he has not been present during the whole time during which the examination has been taken.

76. (1) Except when the charge is one of high treason or murder if the accused person in any of his statements referred to in section *seventy-one* says that he is guilty of the charge then the magistrate shall further say to him the words following or words to the like effect:—"Do you wish the witnesses again to appear to give evidence against you at your trial? If you do not you will now be committed for sentence instead of being committed for trial and you will not afterwards be allowed to deny your guilt."

Proceedings on admission of guilt.

(2) If the accused in answer to such question as aforesaid shall state that he does not wish the witnesses again to appear to give evidence against him his statement shall be taken down in writing and read to him and shall be signed by the magistrate and by the accused and shall be kept with the depositions of the witnesses and sent to the Attorney-General.

* (3) In any such case as is mentioned in the last preceding sub-section the magistrate shall instead of committing the accused for trial order him to be committed for sentence before some court of competent jurisdiction as the Attorney-General may determine and in the meantime the magistrate shall by his warrant commit him to prison to be there safely kept until the sittings of that court or until he is admitted to bail or delivered by due course of law.

* See Rules of Court for Criminal Procedure, Government Notice No. 275 of 1903, *Gazette* (27th March, 1903), p. 538.

Admission to be received as evidence on mere production.

77. The statement of the accused made under the last preceding section shall be received in evidence upon its mere production without further proof thereof by the court before which he is brought for sentence.

When offence committed on the boundaries of districts or on a journey or on a railway.

78. (1) Where an offence is committed on the boundary or boundaries of two or more magisterial districts or within the distance of two miles of any such boundary or boundaries the preparatory examination may be held in any of the said districts.

(2) Where an offence is committed on any person or in respect of any property in or upon any vehicle whatever employed on any journey or on board any vessel whatever employed on any voyage or journey upon any river within or forming the boundary of any part of this Colony the preparatory examination may be held in any magisterial district through any part whereof or on or within the distance of two miles of the boundary whereof such coach cart wagon cart carriage or vessel has passed in the course of the journey or voyage during which such offence was committed.

(3) Where an offence is committed on any person or in respect of any property upon any line of railway the preparatory examination may be held in any magisterial district in or through any part whereof such line of railway passes.

Districts in which preparatory examination may be held.

79. (1) Where a person is charged with committing any offence the preparatory examination may be held in any magisterial district within which the offence was committed or within which any act or omission or event which is an element of the offence has taken place or in which the accused was arrested or is in custody.

(2) Where a person is charged with stealing or obtaining by any offence any property the preparatory examination may be held in any magisterial district within which any part of the property so stolen or obtained by any such offence is found in his possession.

(3) Where a person is charged with an offence which involves the receiving of any property by him the preparatory examination may be held in any magisterial district within which he has any part of the property in his possession.

(4) Where a person is charged with counselling or procuring the commission of an offence or with becoming an accessory after the fact to an offence the preparatory examination may be held in any magisterial district within which the preparatory examination in the case of the principal offender might be held.

(5) Where a person is charged with kidnapping child-stealing or abduction the preparatory examination may be held in the magisterial district in which the kidnapping child-stealing or abduction took place or in any magisterial district through or in which he conveyed or concealed or detained the person kidnapped stolen or abducted.

(6) In special cases not falling within any of the preceding provisions the Attorney-General may authorize the preparatory examination to be held in any other magisterial district.

(7) In case of any doubt or dispute as to the magisterial district in which a preparatory examination should be held or of an objection on the part of the accused to the holding of such examination in any particular district the matter shall be referred to the Attorney-General whose decision shall be final.

80. In every case in which any person charged with any crime or offence shall be summoned or arrested and brought before any magistrate of any district other than that in which such crime or offence is alleged to have been committed and where such magistrate shall see cause to commit such person for trial or sentence or further examination it shall be lawful for such magistrate to grant a warrant to commit such person either to the prison of the district in which the offence is alleged to have been committed or to the prison of the district within which such magistrate has jurisdiction to act.

Committal by magistrate if the offence be committed in other than his own district.

81. The magistrate of any district shall on an application to that effect signed by the Attorney-General grant a warrant for the removal of any person detained in virtue of any legal warrant within the prison of such district on any criminal charge to the prison of any other district specified in such application therein to be detained for further examination trial or sentence or until liberated or removed therefrom in due course of law.

Removal of prisoner from prison of one district to that of another.

82. Where sufficient grounds do not appear for at once committing the prisoner for trial or for discharging him and there shall appear to the magistrate probability that further evidence may be produced the magistrate may grant a warrant for committing him for a period not exceeding eight days for further examination. Such committal for further examination may if necessary take place more than once upon sufficient cause appearing to the magistrate which cause shall be expressed in the warrant of recommitment; and every warrant of commitment for examination shall specify the time when the prisoner is again to be brought before the magistrate for examination; provided however that the magistrate may with the consent of the accused proceed with the examination before the expiration of the period mentioned in such warrant.

Committal for further examination.

83. A magistrate holding a preparatory examination may (a) change the place of hearing of the matter to any other place within his jurisdiction if through the inability from illness or other cause of the accused or a witness to attend at the place where the magistrate usually sits or from any other reasonable cause it appears desirable to do so and may adjourn the examination for that purpose;

Discretionary powers of the magistrate.

(b) order that no person other than the prosecutor and accused their counsel attorney or agent shall have access to or remain in the room or building in which the examination is held (which shall not be an open court) if it appears to him that the ends of justice or the interests of public morality will be best served by so doing ;

(c) regulate the course of the inquiry in any way which may appear to him desirable and which is not inconsistent with the provisions of this Code or of any other law.

Bail before conclusion of examination in the magistrate's discretion.

84. Until the warrant for commitment for trial or sentence is made out no prisoner can insist on being admitted to bail ; but except when the crime is murder or high treason it is in the discretion of the magistrate to admit a prisoner to bail before the preparatory examination is concluded.

If the accused person when admitted to bail before he is committed for trial or sentence does not appear at the time and place mentioned in the recognizance then the magistrate may declare such recognizance forfeited adjourn the examination and issue a warrant for his apprehension as hereinbefore provided.

The prosecutor or magistrate conducting preparatory examination to make local inspection and to cause post-mortem and other examinations to be made.

85. It is the duty of the person charged with the prosecution or the magistrate who conducts the preparatory examination to make or cause to be made any local inspections which the particular circumstances of the case may render necessary ; and in cases of homicide or of serious injury to the person of any individual to cause the dead body or the person injured to be examined by a regularly admitted medical practitioner if any such can be procured and if not then by the best qualified person or persons obtainable who shall draw up and subscribe a written statement of the appearances and facts observed on such examination.

All articles to be used in evidence on the trial to be labelled for identification and to be kept in safe custody.

86. The magistrate conducting the preparatory examination shall cause all writings and other articles exhibited by the witnesses in the course of the preparatory examination and likely to be used in evidence on the prisoner's trial to be inventoried and labelled or otherwise marked in the presence of the person producing the same so that they may be capable of being identified at the prisoner's trial and shall cause the same to be kept in safe custody until the trial and to be then produced.

Records of preparatory examination to be sent to Attorney-General. Powers of Attorney-General.

87. Where any preparatory examination has been held by any magistrate such magistrate shall forward a copy of the record of such examination to the Attorney-General for his consideration.

88. After considering the preparatory examination submitted to him the Attorney-General may

(a) order that the accused (if in prison) be forthwith liberated unless he has received notice from some person entitled to commence a private prosecution against the accused for the offence charged that such person intends to institute such a prosecution ;

- (b) in cases in which the magistrate has discharged the accused order that the accused be committed for trial if in his opinion the accused ought to have been so committed. The Attorney-General may also order the committal for trial of the accused for any offence disclosed by the evidence taken at the preparatory examination ;
- (c) remit the case to be tried by the magistrate under his ordinary jurisdiction ;
- (d) remit the case to be dealt with by the magistrate under the jurisdiction conferred by section *ninety* ; or
- (e) remit any person committed for sentence under section *seventy-six* to be dealt with by the magistrate either under his ordinary jurisdiction or under that conferred by section *ninety* ;
- (f) order that a further examination of the accused take place ;
- (g) take such measures and give such directions for the trial of the prisoner before such competent court as he may deem most expedient.

89. Cases remitted under the provision of the last preceding section shall be proceeded with in like manner in all respects as if no preparatory examination had been previously taken in such cases save that when the magistrate who shall try any such case shall be himself the person before whom the preparatory examination was taken it shall not be imperative upon him to recall any witness who formerly gave *his evidence in the presence of such magistrate and of the accused but it shall be competent and sufficient to read as evidence the deposition of such witness ; provided that except as in sections *ninety-five* and *two hundred and ten* provided no deposition of any witness not previously examined in the presence of both such magistrate and such accused shall be read or used at the subsequent trial but such witness if a necessary one shall be again summoned and be examined in like manner as if he had not been before examined in the case ; and provided also that as often as it shall appear to such magistrate himself or be made to appear to him by either the prosecutor or accused that the ends of justice might be served by having a witness formerly examined in the presence of such magistrate and of the accused summoned again for further examination then such witness shall be summoned and examined accordingly.

Procedure on remittal.

90. If an accused person whose case shall have been remitted under the provisions of section *eighty-eight* to be dealt with under this section be convicted the magistrate may sentence him to a fine not exceeding one hundred and fifty pounds or to imprisonment with or without hard labour for any period not exceeding one year or to whipping when such punishment can by law be inflicted for the offence in any number of strokes not exceeding twenty-five or to both such fine and such imprisonment or to such imprisonment

Punishment.

* As in *Gazette*.

and such whipping : provided that whipping shall not except when specially imposed by law for a first offence be inflicted except in the case of a second or subsequent conviction of some offence within the space of three years.

Powers of
Supreme
Court to
review.

†91. The provisions of sections *thirty-nine* to *forty-three* of the Magistrates' Court Proclamation 1902 shall extend and apply to all cases remitted to magistrates' courts under section *eighty-eight* of this code to be dealt with under the last preceding section.

Accused to
be committed
for trial by
an inferior
court before
trial in
superior
court.

92. No person shall be tried in any superior court for any offence unless he shall have been previously committed for trial by some competent court or magistrate or by order of the Attorney General under the powers conferred upon him by clause (b) of section *eighty-eight* for or in respect of the offence charged in such indictment; provided always that nothing herein contained shall be construed so as to deprive the Supreme Court or any judge thereof of any power which such court or judge may by law possess to direct upon the application of any party interested any magistrate to take a preparatory examination or to order any person to be committed for trial whether any preparatory examination shall have been taken against such person or not; and provided that any accused shall be deemed and taken to have been committed for trial for or in respect of the offence charged in such indictment as often as the depositions taken before the committing magistrate shall contain an allegation of any fact or facts upon which the accused might have been committed upon the charge named in the indictment although the committing magistrate may when committing the accused upon such depositions have committed him for some offence other than that charged in the indictment or for some other offence not known to the law of this Colony; provided also that any accused who shall be in actual custody when brought to trial or who shall appear to take his trial in pursuance of any recognizance entered into before any magistrate shall be deemed and taken to have been duly committed for trial upon the charge stated in the indictment unless he shall prove the contrary.

Persons bailed
or committed
to prison
entitled to
receive copy
of depositions
of witnesses.

93. Every person who shall be held to bail or committed to prison for any offence shall be entitled to require and have within a reasonable time in that behalf from the person who shall have the lawful custody thereof and who is hereby required to deliver the same a copy of the depositions of the witnesses respectively upon whose depositions he has been so held to bail or committed to prison and of his own statement on payment of a reasonable sum not exceeding ninepence for each folio of one hundred words; provided that if such demand shall not be made before the day appointed for the commencement of the trial of the person on whose behalf such demand shall be made such person shall not

† See Act No. 18, 1907, section *one*.

be entitled to have any such copy as aforesaid unless the judge presiding at such trial shall be of opinion that such copy may be made and delivered without delay or inconvenience to the trial; but it shall nevertheless be competent for such judge if he shall think fit to postpone such trial on account of such copy not having been previously had by the accused.

94. Every person under trial shall be entitled at the time of the trial to inspect without fee or reward all depositions (or copies thereof) which have been taken and the statement made at the preliminary examination of such person.

Persons under trial may inspect depositions without charge at trial.

95. If it is proved that the accused has absconded and that there is no immediate prospect of arresting him the court or magistrate competent to try or commit for trial such person for the offence complained of may on the instruction of the Attorney-General in the absence of the accused examine the witnesses (if any) produced on behalf of the prosecution and record their depositions. On the arrest of the accused any such deposition may with the permission of the court be given in evidence against him on the inquiry into or trial for the offence with which he is charged if the deponent is dead too ill to attend or after diligent search cannot be found or from any other cause is incapable of giving evidence or is kept away from the trial by the contrivance of the accused.

Record of evidence in absence of accused.

96. In every case where a person is committed for trial or sentence he shall be entitled to demand a true copy of the warrant under the hand of the officer the bearer thereof or keeper of the prison in which he is imprisoned who shall be liable to a penalty not exceeding fifty pounds if he refuse to give it within six hours after it is demanded by the prisoner or his agent.

True copy of warrant of commitment to be furnished to prisoner under a penalty of £50.

CHAPTER VIII.

BAIL.

97. Every prisoner committed for trial in respect of any offence except treason or murder is entitled as soon as the warrant of commitment for trial or sentence is made out to be admitted to bail.

Bailable offences.

98. It shall be competent for the prisoner at the time of the commitment to apply verbally to the magistrate or judge granting the warrant of commitment to be immediately liberated on bail.

Verbal application at the time of commitment to be admitted to bail.

99. At any period subsequent to the time of commitment it shall be competent for the prisoner to apply by writing to the magistrate or judge who granted the warrant of commitment or to the magistrate within whose district he is imprisoned or to the Supreme Court or to any judge thereof to be admitted to bail. But when the commitment is on a warrant issued by the Supreme Court or any judge thereof it shall only be competent to apply for bail to the said Supreme Court or to one of the judges thereof.

After commitment application to be made in writing to the magistrate who granted the warrant or the magistrate of the district or any judge of the Supreme Court.

Every such written application for bail shall be in form of a petition and shall be accompanied by a copy of the warrant of commitment or affidavit that a copy is denied.

Magistrate to determine whether the offence is bailable and notify the bail in twenty-four hours.

100. Every magistrate to whom an application for bail is made shall within twenty-four hours after such application if the offence is bailable by him fix the amount of the bail to be given and failing to do so shall be liable in the penalty of a sum not exceeding one hundred pounds.

In determining whether the offence for which the prisoner has been committed is bailable or not by the magistrate he shall in the ordinary case take the charge against the prisoner as he finds it on the face of the warrant of commitment.

Power of Supreme Court to admit to bail. Refusal of bail from the uncertain issue of the act committed.

101. The Supreme Court has power at any stage of the proceedings to admit to bail in all cases whatever whether capital or not.

102. In cases where a doubt may arise concerning the degree and quality of the offence from the uncertain issue in the case of an injury of which it cannot be foretold whether the person injured shall die or recover every judge or magistrate to whom application for bail is made may refuse to grant the same until all hazard of the life of the person injured be at an end.

Excessive bail not to be required.

103. The amount of the bail to be taken in each case shall be at the discretion of the judge or magistrate to whom the application to be admitted to bail shall be made; provided that no person shall be required to give excessive bail.

Prisoner aggrieved may apply to the Supreme Court.

104. Whenever a prisoner considers himself aggrieved by the refusal of any magistrate to admit him to bail or by such magistrate having required excessive bail it shall be competent to such prisoner to apply to the Supreme Court; or in case such court shall not then be sitting to any of the judges thereof who shall make such order thereon as to it or him in the circumstances of the case shall seem just.

Condition of recognizance that the prisoner shall appear to answer to an indictment at any time within twelve months and that he will accept service at some certain place by him elected.

105. The recognizance shall be taken by the court judge or magistrate either from the prisoner alone or from the prisoner and one or more sureties at the discretion of the court judge or magistrate according to the nature and circumstances of the case and the conditions of such recognizance shall be that the prisoner shall appear and undergo any further examination which the magistrate or Attorney-General may consider desirable and also answer to any indictment or charge that shall be presented or made against him in any competent court for the offence wherewith he is charged at any time within the space of twelve months from the date thereof that he will also attend during the hearing of the case and to receive sentence; and that he will accept service of any summons to undergo further examination and any such indictment notice of trial and summons thereon at some certain and convenient place

within this Colony by him elected and therein expressed. The recognizance shall continue in force notwithstanding any disagreement of the jury.

* 106. If through mistake fraud or otherwise insufficient sureties have been accepted or if they afterwards become insufficient the court judge or magistrate granting the bail may issue a warrant of arrest directing that the person released on bail be brought before it or him and may order him to find sufficient sureties and on his failing so to do may commit him to prison.

Accused may be required to find further sureties.

107. (1) All or any sureties for the attendance and appearance of a person charged with any offence and released on bail may at any time apply to the court judge or magistrate before whom the recognizance was entered into to discharge the recognizance either wholly or so far as relates to the applicants.

Discharge of sureties.

(2) On such application being made the court judge or magistrate shall issue a warrant of arrest directing that the person so released be brought before it or him.

(3) On the appearance of such person pursuant to the warrant or on his voluntary surrender the court judge or magistrate shall direct the recognizance to be discharged either wholly or so far as relates to the applicants and shall call upon such person to find other sufficient sureties and if he fails to do so may commit him to prison.

108. The sureties may bring the person charged and released on bail as aforesaid into the court at which he is bound to appear during the sitting thereof and then by leave of the court render him in discharge of such recognizance at any time before sentence and such person shall be committed to prison there to remain until discharged by due course of law; but such court may admit such person to bail for his appearance at any time it deems meet.

Render in court.

109. The arraignment and conviction of any person charged and released on bail as aforesaid shall not discharge the recognizance but the same shall be effectual for his appearance during the trial and until sentence is passed or he is discharged; nevertheless the court may commit such person to prison upon his arraignment or trial or may require new or additional securities for his appearance for trial or sentence as the case may be notwithstanding such recognizance; and such commitment shall be a discharge of the sureties.

Sureties not discharged until sentence or discharge of prisoner.

110. Whenever a person charged with any offence has been released on bail under any of the provisions of this code it shall be lawful for any judge or magistrate if he sees fit upon the application of any police officer and upon information being made in writing and upon oath by such officer or by some person on his

Person released on bail may be arrested if about to abscond.

* Sections 106 to 110 inclusive and section 113 are applied *mutatis mutandis* to bail allowed by magistrates trying persons summarily (see Ordinance No 15 of 1903, section *four*).

behalf that there is reason to believe that the person so bailed is about to abscond for the purpose of evading justice to issue his warrant for the arrest of the person so bailed and afterwards upon being satisfied that the ends of justice would otherwise be defeated to commit such person when so arrested to prison until his trial.

Deposit instead of recognizance.

111. When any person is required by any court judge or magistrate to execute a bond with or without sureties under any of the provisions of this Code such court judge or magistrate may except in the case of a bond for good behaviour permit him to deposit a sum of money or Government securities to such amount as the court judge or magistrate may fix in lieu of executing such bond.

On failure of accused to appear at the trial recognizance to be forfeited.

112. When it shall appear by the endorsement made on the writ by the officer executing the same or by other sufficient proof that the copy of the indictment and notice of trial or sentence have been duly served and the accused on the day appointed for the trial or sentence does not appear it shall be competent for the prosecutor to apply to the judge for his warrant for the apprehension of the accused and it shall also be competent for the prosecutor to move the court that the accused and his sureties may be called upon their recognizance and in default of his appearance that the same may be then and there estreated.

The Attorney-General may in his discretion remit any portion of the amount so estreated and enforce payment in part only.

Death of surety.

113. When a surety to a recognizance dies before any forfeiture has been incurred his estate shall be discharged from all liability in respect of the recognizance but the accused may be required to find a new surety.

CHAPTER IX.

INDICTMENTS.

Indictment.

114. When a person charged with an offence has been committed for trial or sentence and it is intended to prosecute him before the Supreme Court or any Circuit Court having jurisdiction the charge shall be in writing in a document called an indictment.

When the prosecution is at the public instance the indictment shall be in the name of and shall be signed by the Attorney-General. When the prosecution is a private one the indictment shall be in the name of the party at whose instance it is preferred (who must be described therein with certainty and precision) and must be signed by such private party or by some advocate for him.

It shall not be competent for two or more persons to prosecute in the same indictment except in the case where two or more persons have been injured by the same offence.

115. As soon as the indictment in any criminal case brought in any superior court shall have been duly filed with the registrar of such court such case shall be deemed to be pending in such court.

When the case is pending.

116. Any person charged with an offence may be indicted either before the Supreme Court or before any Circuit Court having jurisdiction over the magisterial district in which the accused is in custody or in which the preparatory examination in respect of such offence has or might have been held under the provisions of section *seventy-eight* and clauses (1) to (5) of section *seventy-nine* or in which such examination has been held under clauses (6) and (7) of such last-mentioned section.

In what courts indictment may be tried.

117. If on the trial of a person charged with any offence before any court it appears that he is not properly triable before that court under any of the provisions of the last preceding section he is not by reason thereof entitled to be acquitted but the court may at the request of the accused discharge the jury from giving a verdict and direct that he be tried before some proper court and may remand him for trial accordingly.

Persons brought before wrong court.

If he does not make such request the trial is to proceed and the verdict and judgment shall have the same effect in all respects as if the court had originally had jurisdiction to try the accused.

This section does not affect the right of the accused to plead to the jurisdiction of a court.

118. Any number of counts for any offences whatever may be joined in the same indictment. Provided that to a count charging murder no count charging any offence other than murder shall be joined.

Joinder of counts.

When there are more counts than one in an indictment they shall be numbered consecutively and each count may be treated as a separate indictment.

If the court thinks it conducive to the ends of justice to do so it may direct that the accused shall be tried upon any one or more of such counts separately. Such order may be made either before or in the course of the trial and if it is made in the course of the trial the jury shall be discharged from giving a verdict on the counts on which the trial is not to proceed. The counts in the indictment which are not then tried shall be proceeded upon in all respects as if they had been found in a separate indictment.

If one sentence is passed upon any verdict of guilty on more counts than one the sentence shall be good if any of such counts would have justified it.

119. If a single act or series of acts is of such a nature that it is doubtful which of several offences is constituted by the facts which can be proved the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some or one of the said offences.

Where it is doubtful what offence has been committed.

Essentials of indictment.

120. Subject to the provisions hereinafter contained each count of the indictment must set forth the offence with which the accused is charged in such manner and with such particulars as to the alleged time and place of committing the offence and the person (if any) against whom and the property (if any) in respect of which the offence is alleged to have been committed as may be reasonably sufficient to inform the accused of the nature of the charge.

A count may refer to any section of any statutory enactment creating the offence charged therein and in estimating the sufficiency of such count the court shall have regard to the reference.

Where any of the particulars herein referred to are unknown to the prosecutor it shall be sufficient to state that fact in the indictment.

Court may order delivery of particulars.

121. The court may either before or at the trial in any case if it thinks fit direct particulars to be delivered to the accused of any matter alleged in the indictment and may if necessary adjourn the trial for the purpose of such delivery.

Such particulars as aforesaid shall be delivered to the accused or his attorney without charge and such particulars shall be entered in the record and the trial shall proceed in all respects as if the indictment had been amended in conformity with such particulars.

In determining whether a particular is required or not and whether a defect in the indictment is material to the substantial justice of the case or not the court may have regard to the preparatory examination.

Certain discrepancies between indictment and evidence may be corrected.

122. Whenever on the trial of any indictment there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof or if it appears that any words or particulars that ought to have been inserted in the indictment have been omitted or that any words or particulars that ought to have been omitted have been inserted or that there is any other error in the indictment the court before which the trial shall be held may if it shall consider such variance omission insertion or error not material to the merits of the case and that the accused cannot be prejudiced thereby in his defence on such merits order such indictment to be amended so far as it is necessary by some officer of the court or other person both in that part of the indictment where such variance omission insertion or error occurs and in every other part of the indictment which it may become necessary to amend on such terms (if any) as to postponing the trial and directing it to be held before the same or another jury as such court shall think reasonable. The indictment is thereupon to be amended in accordance with the order of the court and after any such amendment the trial shall proceed at the appointed time upon the amended indictment in the same manner and with the same consequences in all respects as if the indictment had been originally in its amended form.

The fact that any such indictment has not been amended as provided in this section shall not unless the court has refused to allow the amendment affect the validity of the proceedings thereunder.

123. Every verdict and judgment which shall be given after the making of any amendment under the provisions of this Code shall be of the same force and effect in all respects as if the indictment had originally been in the same form in which it was after such amendment was made.

Verdict as valid as if indictment had been originally correct.

124. No count for publishing a blasphemous seditious obscene or defamatory libel or for selling or exhibiting any obscene book pamphlet newspaper or other printed or written matter shall be open to objection or deemed insufficient on the ground that it does not set out the words thereof; provided that the court may order that a particular shall be furnished by the prosecutor stating what passages in such book pamphlet newspaper printing or writing are relied on in support of the charge.

Indictments for libel.

125. In an indictment for an offence which relates to taking or administering an oath or engagement or to giving false testimony or to making a false statement on solemn declaration or otherwise or to procuring the giving of false testimony or the making of a false statement it is not necessary to set forth the words of the oath or engagement or testimony or statement but it is sufficient to set forth the purport thereof or so much of the purport as is material.

Indictments for giving false evidence.

In an indictment which relates to giving false testimony or procuring or attempting to procure the giving of false testimony it is not necessary to allege the jurisdiction or state the nature of the authority of the court or tribunal before which the false testimony was given or intended or proposed to be given.

126. (1) In an indictment for an offence relating to a testamentary instrument it is not necessary to allege that the instrument is the property of any person.

Rules applicable to particular indictments.

(2) In an indictment for an offence relating to anything fixed in a square or street or in a place dedicated to public use or ornament or to anything in or taken from a public place or office it is not necessary to allege that the thing in respect of which the offence is committed is the property of any person.

(3) In an indictment for an offence relating to a document which is evidence of title to land or an interest in land the document may be described as being evidence of the title of the person or some one of the persons having an interest in the land to which the document relates the land or some part thereof being described in some manner sufficient to identify it.

(4) In an indictment for stealing anything whatsoever let to the offender the thing may be described as the property of the person who actually let it to hire.

(5) In an indictment against a person employed in the public service for an offence committed with respect to anything which came into his possession by virtue of his employment the thing in question may be described as the property of His Majesty.

(6) In an indictment for an offence committed with respect to anything in the occupation or under the management of any public officer or commissioner the thing may be described as belonging to such officer or commissioner without naming him.

(7) In an indictment for an offence committed with respect to any property movable or immovable whereof any body corporate has by law the management control or custody the property may be described as belonging to such corporate body.

(8) In an indictment for an offence respecting any property if it is uncertain to which of two or more persons the property belonged at the time when the offence was committed the property may be described as being the property of one or other of such persons naming each of them but without specifying which of them; and the indictment will be sustained so far as regards the allegation of ownership upon proof that at the time when the offence was committed the property belonged to one or other of such persons without ascertaining which of them.

127. In every case in which it shall be necessary in any indictment to name any joint-stock company or co-partnership it shall be sufficient to state the name style or firm of such company or co-partnership without naming any of the officers or shareholders of such joint-stock company or any of the partners in such co-partnership and one individual trading under the style or title of a firm may be described by such style or title.

It shall be sufficient where two or more persons not partners are joint owners of property to name one of such persons adding the words "and another" or "and others" as the case may be and to state that the property belonged to the person so named and another or others as the case may be.

128. It shall not in any indictment be necessary to set forth the manner in which or the means or instrument by which any act is done unless the manner means or instrument is an essential element of the offence.

129. It shall be sufficient in every indictment for murder to charge that the defendant did wrongfully unlawfully and maliciously kill and murder the deceased and it shall be sufficient in every indictment for culpable homicide to charge that the defendant did wrongfully and unlawfully kill the deceased.

130. In any indictment for forging uttering stealing destroying concealing or otherwise unlawfully dealing with any instrument it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known or by the purport thereof without setting out any copy or facsimile thereof or otherwise describing the same or stating the value thereof.

Joint-stock companies and co-partnership may be named in indictments by their style or firm.

Means or instrument by which act is done need not be stated.

In indictment for murder or culpable homicide charge as to fact sufficient.

In indictment for forgery and other cases copy of instrument not necessary.

In all other cases wherever it shall be necessary to make any averment in any indictment as to any instrument whether the same consists wholly or in part of writing print or figures it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known or by the purport thereof without setting out any copy or facsimile or the whole or any part thereof.

131. In an indictment for an offence relating to an insolvent it is not necessary to set forth any debt act of insolvency adjudication or other proceeding in any court or any order warrant or document made or issued out of or by the authority of any court.

Certain particulars not required in case of an offence relating to insolvency.

132. It shall be sufficient in any indictment for forging uttering offering disposing of or putting off any instrument whatsoever or for obtaining or attempting to obtain any thing by means of false pretences or for obtaining or attempting to obtain any thing by means of a fraudulent trick or device or any other fraudulent means or for inducing by means of any such trick or device or fraudulent means the payment or delivery of any money or thing or for attempting to commit or to procure the commission of any such offence to allege that the accused did the act with intent to defraud without alleging the intent of the accused to be to defraud any particular person ; and on the trial of any of the offences in this section mentioned it shall not be necessary to prove an intent on the part of the accused to defraud any particular person but it shall be sufficient to prove that the accused did the act charged with an intent to defraud.

Proof of intent to defraud sufficient without proving whom it is intended to defraud.

In the case of any such offence it is not necessary to mention the owner of the property in question or to set forth the details of the pretence or trick or device or fraud.

133. If on the trial of any person charged with any offence it shall appear to the jury upon the evidence that the accused did not complete the offence charged but that he was guilty only of an attempt to commit the same such person shall not by reason thereof be entitled to be acquitted but the jury shall be at liberty to return as their verdict that the defendant is not guilty of the offence charged but is guilty of an attempt to commit the same or of an attempt to commit any other offence of which he might be convicted on the indictment under any of the provisions of this Code and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular offence of which he is found guilty ; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an attempt to commit the offence for which he was so tried.

On trial for commission of an offence accused may be found guilty of attempt.

If charge of robbery fail and assault with intent be proved.

134. If upon the trial of any person upon any indictment for robbery it shall appear to the jury upon the evidence that the accused did not commit the crime of robbery but that he did commit an assault with intent to rob or an assault or theft forming part of the crime of robbery charged in the said indictment the accused shall not by reason thereof be entitled to be acquitted but the jury shall be at liberty to return as their verdict that the accused is guilty of an assault with intent to rob or of an assault or of theft and thereupon such accused shall be liable to be punished in the same manner as if he had been convicted upon an indictment for assaulting with intent to rob or of assault or theft; and no person so tried as herein lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried or for the assault or theft forming part of the said crime or robbery. And as often as any person shall be charged with the crime of assault with intent to murder he may be found guilty of an assault with intent to do some grievous bodily harm or of a common assault; and in like manner a person charged with assault with intent to do some grievous bodily harm or with an assault with any other particular intent specified in the indictment may be found guilty of common assault.

A person charged with rape or assault with intent to commit rape may be found guilty of indecent assault or common assault.

Person indicted for murder may be convicted of culpable homicide or assault; or when indicted for assault with any particular intent may be convicted of common assault.

135. Any person charged with murder in regard to whom it shall be proved to the satisfaction of the jury that he wrongfully caused the death of the person whom he is charged with killing but without intent may be found guilty of culpable homicide. And any person charged with murder or culpable homicide in regard to whom it shall not be proved to the satisfaction of the jury that he caused the death of the person whom he is charged with killing may in case the jury shall be satisfied that he is guilty of having assaulted such deceased person be found guilty if charged with murder of assault with intent ** to murder or of assault with intent* to do some grievous bodily harm or of common assault and if charged with culpable homicide of assault with intent to do some grievous bodily harm or of common assault.

Conviction for part of crime charged.

136. In other cases not hereinbefore enumerated if the commission of the offence with which the accused is charged as defined in the statutory enactment creating the offence or as set forth in the indictment includes the commission of any other offence the accused person may be convicted of any offence so included which is proved although the whole offence charged in the indictment is not proved.

When evidence shows offence of a similar nature.

137. If on the trial of a person charged with an offence the evidence establishes that he is guilty of another offence of such a nature that upon an indictment charging him with it he might

* Words in italics omitted in "Ordinances 1903" as published, but appear in *Gazette*.

have been convicted of the offence with which he is actually charged he may be convicted of the offence with which he is so charged.

A person so tried is not liable to be afterwards prosecuted for the offence so established by the evidence unless the court before which the trial is held thinks fit to discharge the jury from giving any verdict and to direct that the accused person be indicted for that offence ; in which case he may be dealt with in all respects as if he had not been previously put upon his trial.

138. On the trial of any person upon any indictment or charge of theft the jury before whom such case shall be tried should they consider that the evidence though not sufficient to substantiate the charge of theft is sufficient to show that the prisoner was guilty of receiving stolen goods knowing them to have been stolen may find that the prisoner is guilty of receiving stolen goods knowing them to have been stolen and upon any such finding the prisoner shall be liable to suffer and shall suffer the same penalty as if convicted of the like offence on an indictment or charge specially framed for the offence of receiving stolen goods knowing them to have been stolen.

Persons indicted for theft may on such indictment be convicted of receiving stolen goods knowing them to have been stolen.

139. Charges of stealing any property and of receiving the same property or any part thereof knowing it to have been stolen may be joined in the same indictment and the accused may according to the evidence be convicted either of stealing the property or of receiving it or any part of it knowing it to be stolen.

Stealing and receiving may be joined in the same indictment.

Upon an indictment charging two or more persons jointly with an offence of which the receiving any property is an element if the evidence establishes that one or more of them separately received any part or parts of the property under such circumstances as to constitute an offence such one or more of the accused may be convicted of the offence or offences so established by the evidence.

When such an indictment is preferred against two or more persons all or any of the accused may according to the evidence be convicted of theft of the property or of receiving it or any part of it knowing it to have been stolen ; or according to the evidence one or more of them may be convicted of theft of the property and the other or others of them of receiving it or any part of it knowing it to have been stolen.

140. Any number of persons charged with committing or with procuring the commission of the same offence although at different times or of being accessories after the fact to the same offence although at different times and any number of persons charged with receiving although at different times any property which has been obtained by means of an offence or any part of any property so obtained may be charged with substantive offences in the same indictment and may be tried together notwithstanding that the principal offender or the person who so obtained the property is not included in the same indictment or is not amenable to justice.

Persons implicated in same offence may be tried together.

Principal and accessories may be tried together.

141. A person who counsels or procures another to commit an offence or who aids another person in committing an offence or who becomes an accessory after the fact to an offence may be charged in the same indictment with the principal offender and may be tried with him or separately or may be indicted and tried separately whether the principal offender has or has not been convicted or is or is not amenable to justice.

Concealment of birth.

142. Upon an indictment charging a person with the murder of any person if upon the evidence it appears that the person alleged to have been killed was a child of which a woman had recently been delivered the accused may be convicted of the offence of endeavouring by the secret disposition of the dead body of the child to conceal the birth if this offence is established by the evidence.

Proceedings if property alleged to have been stolen at one time shall have been stolen at different times.

143. If upon any indictment for theft it shall appear that the property alleged in such indictment to have been stolen at one time was stolen at different times the prosecutor shall not by reason thereof be required to elect upon which taking he will proceed and the accused shall be liable to be convicted of every such taking in like manner as if every such taking had been separately charged.

It shall be sufficient to allege the dates between which thefts took place.

144. It shall be lawful in any indictment for theft to allege that the goods charged to have been stolen were taken at divers times between any two certain days stated in the indictment and upon such an indictment proof may be given of the theft of the goods charged to have been stolen upon any day or days between the two certain days aforesaid.

Indictment may charge general deficiency.

145. In an indictment for theft of money the accused may be charged and proceeded against for the amount of a general deficiency notwithstanding that such general deficiency is made up of any number of specific sums of money the taking of which extended over any space of time.

Not necessary to specify particular coin or bank-note stolen.

146. In every indictment in which it shall be necessary to make averment as to any money or any bank-note it shall be sufficient to describe such money or bank-note simply as money without specifying any particular coin or bank-note and such allegation so far as regards the description of the property shall be sustained by proof of any amount of coin or of any bank-note although the particular species of coin of which such amount was composed or the particular nature of the bank-note shall not be proved and in cases of money or bank-notes obtained by false pretences or by any other unlawful act by proof that the offender obtained any coin or any bank-note or any portion of the value thereof although such coin or bank-note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person and such part shall have been returned accordingly.

147. No indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved ; nor for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation instead of his proper name ; nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence ; nor for stating the offence to have been committed on a day subsequent to the filing of the indictment or on an impossible day or on a day that never happened ; nor for want of or imperfection in the addition of any accused or any other person ; nor for want of the statement of the value or price of any matter or thing or the amount of damage injury or spoil in any case where the value or price or the amount of damage injury or spoil is not of the essence of the offence ; provided that as often as any particular day shall be laid in any indictment as the day on which any act or offence was committed proof that such act or offence was committed on any other day or time not more than three months before or after the day laid in the indictment shall be taken to support such averment in case time be not of the essence of the offence ; and provided that in the case of the last preceding proviso mentioned proof may be given that the act or offence in question was committed on a day or time more than three months before or after the day laid in the indictment unless it shall be made to appear to the court before which the trial shall be held that the accused is likely to be prejudiced thereby in his defence upon the merits ; provided however that as often as such court shall consider that the accused is likely to be thereby prejudiced in his defence upon the merits such court shall reject such proof and shall discharge the jury from giving a verdict in the said case and the defendant shall be in the same plight and condition as if he had not been arraigned.

Certain omissions or imperfections not to invalidate an indictment.

148. If in any case the defence of any accused shall be that commonly called an *alibi* and the court before which the trial shall be held shall consider that the accused might be prejudiced in making such defence if proof were admitted that the act or offence in question was committed on some day or time other than the day or time laid in the indictment then although the day or time proposed to be proved shall be within the space of three months before or after the day laid in the indictment the said court shall reject such proof and thereupon the same consequences shall take place as are in the last proviso of the last preceding section mentioned anything in the said section to the contrary notwithstanding. And if in any case no day shall be stated in the indictment or an impossible day or a day that never happened then it shall be lawful for the accused at any time before his arraignment to apply to the Supreme Court or any judge thereof or to the court in which he is indicted and such court or judge thereof upon being satisfied by affidavit or otherwise that such

Proceedings if defence be an *alibi*.

accused is likely to be prejudiced in his defence upon the merits unless some day or time were stated shall make such order in that behalf as in the circumstances of the particular case shall to justice appertain.

Objections to indictment how and when to be made.

149. Every objection to any indictment for any formal defect apparent on the face thereof shall be taken by exception or by motion to quash such indictment before the jury shall be sworn and not afterwards; and every court before which any such objection shall be taken for any formal defect may if it be thought necessary cause the indictment to be forthwith amended in such particular by some officer of the court or other person and thereupon the trial shall proceed as if no such defect had appeared.

CHAPTER X.

TRIAL.

Persons committed to be brought to trial at the first session provided thirty-one days have elapsed from commitment.

150. Every prisoner committed for trial and whom the Attorney-General has decided to prosecute before the Supreme or any Circuit Court shall be brought to trial at the first session of the Supreme Court for the trial of criminal cases or of the Circuit Court having jurisdiction to try the accused held after the date of the commitment or else shall be admitted to bail provided that thirty-one days have elapsed between the date of the commitment and the time of holding such court; unless it shall be made to appear to the satisfaction of the court that in consequence of the absence of material evidence or of some other sufficient cause the trial cannot then be proceeded with without defeating the ends of justice; or unless before the close of such first session of such Supreme Court or such Circuit Court a warrant shall have been obtained from some competent court under the provisions of the next succeeding section for his removal for trial elsewhere. And if such prisoner is not brought to trial at the first session of the Supreme Court or Circuit Court of the district which shall be held after the expiration of six months from the date of his committal for trial or sentence and has not previously been removed for trial or sentence as aforesaid he shall be discharged from his imprisonment for that offence for which he has been committed for trial.

For the purposes of this section a person shall not be deemed to have been committed for trial in any case in which the Attorney-General has ordered a further examination to be taken under the provision of section *eighty-eight* of this Code until such further examination has been completed.

The accused with his own consent in writing and with the consent of the Attorney-General may be brought to trial at any time after his commitment notwithstanding that the period of thirty-one days shall not have expired.

151. When an indictment has been presented against any person in a superior court the court may at any stage of the proceedings on the application of the * Attorney-General or of the accused order that the trial shall be held at some place other than that named in the indictment and at a time to be named in the order.

Change of
place of trial

In any such case the indictment and other proceedings shall be transmitted to the proper officer of the court to which the trial is so removed and that court shall have the same jurisdiction to try the accused as if he had originally been indicted before it and the accused if released on bail is bound to attend to be tried and the witnesses are bound to attend to give evidence at the time and place to which the trial is removed without entering into any fresh recognizances for that purpose in the same manner as if they had respectively been originally bound by their recognizances to appear and to attend and give evidence at the time and place to which the trial is removed.

Notice of such time and place must be given to the persons bound by the recognizances otherwise their recognizances cannot be forfeited.

If the accused is in custody the court may release him on bail.

152. When a case has been removed for trial elsewhere and the accused is in custody the court granting the order of removal shall issue a warrant directing his transmission forthwith to the prison of the district to which the case has been removed. Such prisoner shall be tried at the next session of the court to which the case has been removed held for the trial of criminal cases or otherwise shall be discharged from his imprisonment for that offence for which he was transmitted for trial; provided that if such session shall be held within twenty-one days after the transmission of such prisoner to and his arrival at the prison aforesaid he shall not be tried at such session unless by his own consent in writing and that of the Attorney-General.

Such
prisoners not
brought to
trial at second
session after
commitment
entitled to
discharge
from im-
prisonment.

153. Subject to the provisions of section *one hundred and fifty* it shall be competent for the court before which any case is pending to postpone the trial of the said case until such time and place and upon such terms as to such court may seem proper.

Trial of
pending case
may be
postponed.

154. A trial may be adjourned at any period of the trial whether a jury has or has not been sworn and whether evidence has or has not been given.

Adjournment
of trial.

When the trial of an accused is adjourned after the jury have been sworn the court may discharge the jury.

155. When a trial is so postponed or adjourned the court may admit the accused to bail or enlarge his bail if he has already been admitted to bail and may enlarge the recognizances of the witnesses.

On postpone-
ment or
adjournment
of trial
accused may
be admitted
to bail.

* See Rule of Court under which an application for change of venue may be made by the Attorney-General or the accused without notice. Government Notice No. 408 of 1903, *Gazette* (1st May, 1903).

Accused to
plead to the
indictment.

156. At the time appointed for the trial or sentence of the accused upon any indictment he shall appear or be placed at the bar; and he is to be informed in open court of the offence with which he is charged as set forth in the indictment and he shall be required to plead instantly thereto unless where the accused shall object and the court shall find that he has not been duly served with a copy of the indictment.

Motion to
quash
indictment.

157. The accused may before pleading apply to the court to quash the indictment on the ground that it is calculated to prejudice or embarrass him in his defence to the charge or that it is formally defective.

Upon such motion the court may quash the indictment or may order it to be amended in such manner as the court thinks just or may refuse the motion.

If the accused says that he is wrongly named in the indictment the court may on being satisfied by affidavit or otherwise of the error order the indictment to be amended.

Pleas.

158. If the accused does not object that he has not been duly served with a copy of the indictment or apply to have it quashed under the provisions of the last preceding section he shall either plead to it or except to it on the ground that it does not disclose any offence cognizable by the court. If he pleads he may plead either

- (1) that he is guilty of the offence charged in the indictment or with the consent of the prosecutor of any other offence of which he might be convicted on the indictment; or
- (2) that he is not guilty; or
- (3) that he has already been convicted on an indictment on which he might have been convicted of the offence with which he is charged or has already been convicted of an offence of which he might be convicted on the indictment; or
- (4) that he has already been acquitted on an indictment on which he might have been convicted of the offence with which he is charged or has already been acquitted of an offence of which he might be convicted on the indictment; or
- (5) that he has received the Royal pardon for the offence charged in the indictment; or
- (6) that the court has no jurisdiction to try him for the offence; or
- (7) that the prosecutor has no title to prosecute.

Two or more pleas may be pleaded together except that the plea of guilty cannot be pleaded with any other plea to the same charge.

The accused may plead and except together.

Notice of
motion to
quash indict-
ment and of
certain pleas
to be given.

159. When the accused intends to apply to have the indictment quashed under the provisions of section *one hundred and fifty-seven* or to except or to plead any of the pleas mentioned in the last preceding section except guilty or not guilty he shall give

four days' notice to the Attorney-General and when the prosecution is a private one to the private prosecutor also stating the grounds upon which he seeks to have the indictment quashed or upon which he bases his exception or plea; provided that on good cause shown the court may adjourn the trial to enable such notice to be given.

160. A person charged with the unlawful publication of defamatory matter who sets up as a defence that the defamatory matter is true and that it was for the public benefit that the publication should be made shall plead that matter specially and may plead it with any other plea except the plea of guilty.

Truth of defamatory matter to be specially pleaded.

Notice of such plea shall be given as in the last preceding section provided.

161. When a person has been committed by a magistrate for sentence for an offence he shall be called upon to plead to the indictment in the same manner as if he had been committed for trial and may plead either that he is guilty of the offence charged in the indictment or with the consent of the prosecutor of any other offence of which he might be convicted on the indictment.

Person committed for sentence.

If he pleads that he is not guilty the court upon being satisfied that he duly admitted before the magistrate that he was guilty of the offence charged in the indictment shall direct a plea of guilty to be entered notwithstanding his plea of not guilty. A plea so entered has the same effect as if it had been actually pleaded.

If the court is not satisfied or if notwithstanding that the accused pleads that he is guilty it appears to the court upon the examination of the depositions of the witnesses that he has not in fact committed the offence charged in the indictment or any other offence of which he might be convicted on the indictment the plea of not guilty shall be entered and the trial is to proceed as in other cases when that plea is entered.

A person who has been committed for sentence may plead any of the other pleas mentioned in section *one hundred and fifty-eight*.

162. If the accused when called upon to plead to an indictment will not plead or answer directly to the indictment the court may if it thinks fit order a plea of not guilty to be entered on behalf of the accused. A plea so entered has the same effect as if it had been actually pleaded.

Accused refusing to plead.

163. In any plea of a former conviction or acquittal it shall be sufficient for any accused to state that he has been lawfully convicted or acquitted as the case may be of the offence charged in the indictment or of the other offence of which he alleges that he has been convicted or acquitted.

Statement of accused sufficient plea of former conviction or acquittal.

164. Upon a plea to the jurisdiction of the court the court shall proceed to satisfy itself in such manner and upon such evidence as it thinks fit whether it has jurisdiction or not and may ascertain the fact by the verdict of a jury or otherwise.

Trial on plea to the jurisdiction.

Issues to be tried by jury.

165. If the accused pleads any plea or pleas other than the plea of guilty or a plea to the jurisdiction of the court he is by such plea without any further form deemed to have demanded that the issues raised by such plea or pleas shall be tried by a jury and is entitled to have them tried accordingly.

Exceptions.

166. When the accused excepts only and does not plead any plea the court shall proceed to hear and determine the matter forthwith. If the exception is overruled he shall be called upon to plead to the indictment.

When the accused pleads and excepts together it is in the discretion of the court whether the plea or exception shall be first disposed of.

Separate trials.

167. When two or more persons are charged in the same indictment whether with the same offence or with different offences the court may at any time during the trial on the application of the prosecutor or of any of the accused direct that the trial of the accused or any of them shall be held separately from the trial of the other or others of them and for that purpose may if a jury has been sworn discharge the jury from giving a verdict as to any of the accused in respect of whom such application is made.

Defence by counsel.

168. Every person charged with an offence is entitled to make his defence at his trial and to have the witnesses examined or cross-examined by his counsel.

Presence of accused.

169. The trial shall take place and the witnesses shall unless otherwise expressly provided by law give their evidence *viva voce* in open court in the presence of the accused unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable in which case the court may order him to be removed and may direct the trial to proceed in his absence.

If the accused absents himself during the trial without leave the court may direct a warrant to be issued to arrest him and bring him before the court forthwith.

The judge may at any time during the trial order that any or every person who is to be called as a witness other than the accused himself shall leave the court and remain absent until he is called.

The judge may if he thinks fit at any time during the trial order the court to be cleared or that any persons or class of persons shall leave the court.

Procedure on trial.

170. When the jury have been sworn and before any evidence is given at the trial of the accused person the counsel for the prosecution is entitled to address the jury for the purpose of explaining the charge and opening the evidence intended to be adduced for the prosecution but without comment thereon.

The counsel for the prosecution shall then examine his witnesses and put in and read any documentary evidence which may

be admissible. He may also read any evidence given by the accused as well as his statement made in the presence of the magistrate at the preparatory examination.

If at the close of the case for the prosecution the court considers that there is no evidence that the accused committed the offence charged in the indictment or any other offence of which he might be convicted on the indictment it may then direct the jury to return a verdict of not guilty.

If the court considers that there is evidence that the accused committed the offence charged or any other offence of which he might be convicted on the indictment the court shall call on the accused to enter on his defence.

At the close of the evidence for the prosecution the proper officer of the court is required to ask each of the accused if more than one whether he intends to adduce evidence in his defence. If he answers in the affirmative he may by himself or his counsel address the jury for the purpose of opening the evidence intended to be adduced for the defence but without comment thereon. He or his counsel shall then examine his witnesses and put in and read any documentary evidence which may be admissible.

171. After all the evidence has been led the counsel for the prosecution shall be entitled to address the jury summing up the whole case and the accused and each of the accused if more than one is entitled by himself or his counsel to address the jury in reply. Summing up
by counsel.

172. After the evidence is concluded and the counsel or the accused person or persons as the case may be have addressed the jury or stated that they do not wish to do so it is the duty of the judge to instruct the jury as to the law applicable to the case with such observations on the evidence as the judge thinks fit to make. Summing up
by judge.

173. It is the duty of the judge

(a) to decide all questions of law arising in the course of the trial and especially all questions as to the relevancy of facts which it is proposed to prove and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and in his discretion to prevent the production of inadmissible evidence whether it is or is not objected to by the parties; Duty of
court.

(b) to decide upon the meaning and construction of all documents given in evidence at the trial;

(c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(d) to decide whether any question which arises is for himself or for the jury and upon this point his decision shall bind the jurors.

The judge may if he thinks proper in the course of his summing up express to the jury his opinion upon any question of fact or upon any question of mixed law and fact relevant to the proceeding.

Jury to consider verdict.

174. After the judge has instructed the jury they are to consider their verdict and if necessary they may retire for that purpose.

Duty of jury.

175. It is the duty of the jury

(a) to decide which view of the facts is true and then to return the verdict which under such view ought according to the direction of the judge to be returned;

(b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine whether such words occur in documents or not;

(c) to decide all questions which according to law are to be deemed questions of fact;

(d) to decide whether general indefinite expressions do or do not apply to particular cases unless such expressions refer to legal procedure or unless their meaning is ascertained by law in either of which cases it is the duty of the judge to decide their meaning.

Special verdict.

176. In any case in which it appears to the court that the question whether the accused ought or ought not to be convicted of an offence may depend upon some specific fact or that the proper punishment to be awarded upon conviction may depend upon some specific fact the court may require the jury to find specially as to the existence or non-existence of that fact.

General verdict on charge of defamation.

177. Notwithstanding the provisions of the last preceding section the jury on the trial of a person charged with the unlawful publication of defamatory matter may give a general verdict of guilty or not guilty upon the whole matter in issue.

Jury not to separate.

178. Except as hereinafter provided after the jury have been sworn and the charge has been stated to them by the proper officer they shall not separate until they have given their verdict or are discharged by the court.

If the jury shall desire to withdraw for the purpose of considering their verdict they shall be kept by an officer of the court in some convenient private place apart by themselves until they *are agreed upon their verdict or be discharged by the court; and the said officer shall be sworn that he will suffer none to have access to them or to speak to or have communication with them except by leave of the court and that he will not speak to them himself except to ask whether they are agreed upon the verdict or to communicate between them and the court.

The court may in its discretion permit the jury to separate before considering their verdict for such period during any adjournment of the trial as the court may think fit. If any person disobeys the directions of this section he may be punished summarily as for contempt of court.

* See sec. *one hundred and eighty-seven* as to the number of jurors required to agree upon a verdict.

The validity of the proceedings is not affected by any such disobedience but if the fact is discovered before the verdict is given the court if it is of opinion that such disobedience is likely to prejudice the fair trial of the accused may discharge the jury and may direct that a fresh jury be sworn during the same session of the court or may adjourn the trial.

179. When the jury have arrived at a verdict the foreman shall inform the judge in open court and in the presence of all the jury and of the prisoner what their verdict is and such verdict shall be thereupon recorded by the proper officer of the court. The jury shall either pronounce a general verdict of " guilty " or " not guilty " or else shall return a special verdict finding the facts of the case.

Verdict to be given in open court.

The jury may acquit the accused of a part of the charge against him and find him guilty of the remainder.

180. Unless otherwise ordered by the court the jury shall return a verdict on each count on which the accused is tried and the judge may ask them such questions as are necessary to ascertain what their verdict is.

Jury to return a verdict on each count.

Such questions and the answers to them shall be recorded.

181. When by accident or mistake a wrong verdict is delivered the jury may before or immediately after it is recorded amend the verdict and it shall stand as ultimately amended.

Amending verdict.

182. The court may in any case if it thinks fit direct that the jury shall view any place or thing which the court thinks it desirable that they should see and may give any necessary directions for that purpose.

View by jury.

The validity of the proceedings is not affected by disobedience to any such directions but if the fact is discovered before the verdict is given the court if it is of opinion that such disobedience is likely to prejudice the fair trial of the accused may discharge the jury and may direct that a fresh jury be sworn during the same session of the court or may adjourn the trial.

*183. If the jury cannot agree as to the verdict to be given or if any emergency arises of such a nature as to render it in the opinion of the court necessary or highly expedient for the ends of justice to do so the court may in its discretion discharge the jury without giving a verdict and may direct that a fresh jury be sworn during the same session of the court or may adjourn or postpone the trial until such time and place and upon such terms as to such court may seem proper.

Discharge of jury.

Such an exercise of discretion is not subject to review by any court.

The provisions of section *one hundred and fifty-five* shall apply to cases postponed under this section.

184. If the presiding judge becomes incapable of proceeding with the trial or directing the discharge of the jury it is the duty of the senior officer of the court to discharge the jury.

Incapacity of judge.

* See sec. *one hundred and eighty-seven* as to number of jurors to be agreed as to verdict for the jury to be deemed to be so agreed.

In any such case the accused unless already released on bail must remain in custody and may be again put on his trial. But he has the same rights with respect to admission to bail as upon an original committal for trial for the offence with which he is charged and the court or magistrate may in a proper case admit him to bail accordingly.

Incapacity
of juror.

185. If at any time during the trial a juror dies or becomes in the opinion of the court incapable of continuing to act as a juror or is absent the court may in its discretion discharge the jury under the provisions hereinbefore contained or may if it thinks fit at the request of the accused and with the consent of the prosecutor discharge the juror so becoming incapable or being absent and direct that the trial shall proceed with the remaining jurors. In any such case the verdict of the remaining jurors not being less than six shall have the same effect as if all the jurors had continued present.

Verdict on
Sunday.

186. The taking of a verdict or any other proceeding of the court is not invalid by reason of its happening on a Sunday.

CHAPTER XI.

JURY.

Criminal
cases to be
tried by
judge and
jury of nine
persons.

187. In any criminal case depending before a superior court the trial of the accused shall be before any one or more of the judges of the Supreme Court and a jury of nine men **of whom not less than seven shall determine the verdict.*

Summoning
of jurors.

188. Jurors shall be summoned to attend for the trial of persons indicted before a superior court in the manner prescribed by the law relating to juries.

Want of
qualification
of juror not
to affect
verdict.

189. No verdict in any case shall be open to objection or shall be in any way affected by reason of the want of qualification or the disqualification of any juror nor by reason of any juror being summoned from beyond the limits of the jury district nor by reason of any error informality or omission with respect to the jury lists or jury books.

Accused to
be informed
of his right
to challenge.

190. When the accused has demanded to be tried by a jury the proper officer of the court shall inform him in open court that the persons whose names are to be called are the jurors to be sworn for his trial and shall further inform him that if he desires to challenge any of them he must do so before they are sworn.

Challenging
the whole
panel.

191. Either the accused or the prosecutor may challenge the whole panel on the ground of partiality fraud or wilful misconduct on the part of the sheriff or his deputies by whom the panel was returned but on no other ground. The objection shall be made in writing and shall state that the person returning the panel was guilty of partiality fraud or wilful misconduct as the case may be.

* Words in italics substituted by Act No. 38, 1909, section *eight*.

If partiality fraud or wilful misconduct as the case may be is denied the court shall decide whether the ground of challenge is true or not. If it finds that the alleged ground of challenge is true in fact or if the party who has not challenged the panel admits that the ground of challenge is true in fact the court shall direct a new panel to be returned.

If the accused desires to object to the whole panel of jurors he must do so before any juror is sworn for his trial.

192. The prosecutor or the accused in each case may challenge and set aside three jurors without assigning any cause; and may in addition challenge and set aside any number of jurors for any of the following causes; that is to say

(1) that the juror is not qualified by law to act as a juror;

(2) that the juror is not indifferent as between the prosecution and the accused;

(3) that the juror is related to the accused within the fourth degree of consanguinity or affinity.

193. An objection to a juror either by way of peremptory challenge or by way of challenge for cause may be made at any time before the juror has been sworn but not afterwards.

194. If several accused persons are jointly indicted and it is proposed to try them together they or any of them may either join in their challenges in which case the persons who so join shall have only as many challenges as a single person would be entitled to or each may make his challenges in the same manner as if he were intended to be tried alone in which case he may at the option of the prosecutor be tried alone.

195. If at any time it becomes necessary to ascertain the truth of any matter alleged as cause for challenge the fact shall be tried by the court.

196. Whenever after the proceedings hereinbefore provided the panel has been exhausted and a complete jury cannot be had by reason thereof then upon request made by the prosecutor the court may order either verbally or in writing the sheriff or other proper officer forthwith to summon such number of persons whether qualified jurors or not as the court deems necessary and directs in order to make a full jury; and such persons may if necessary be summoned by word of mouth.

The names of the persons so summoned shall be added to the general panel for the purposes of the trial and the same proceedings shall be taken as to challenging such persons as are hereinbefore provided with respect to the persons named in the original panel except that persons summoned under this section shall not be challenged on the ground merely that they are not qualified jurors.

197. If on the arraignment or during the trial of any person charged with an offence it is alleged or appears that he is not of sound mind or if on the trial of any person the defence is set up

Challenging jurors.

Time for challenging.

Joint trials.

Ascertainment of facts as to challenge.
Ordering a tales.

Trial of insane persons.

that the accused was not criminally responsible on the ground of insanity for the act or omission alleged to constitute the offence such person shall be dealt with in the manner provided by Part II of the Lunacy Proclamation 1902.

Doubt as to capacity of accused to understand the proceedings.

198. If when the accused is called upon to plead to the indictment it appears to be uncertain for any reason whether he is capable of understanding the proceedings at the trial so as to be able to make a proper defence a jury of nine men to be chosen from the panel of jurors shall be impanelled forthwith who shall be sworn to find whether or not he is so capable.

If the jury find that he is so capable of understanding the trial shall proceed as in other cases.

If the jury find that he is not so capable the finding shall be recorded and the court may order the accused to be discharged or may order him to be kept in custody in such place and in such manner as the court thinks fit until he can be dealt with according to law.

A person so found to be incapable of understanding the proceedings at the trial may be again indicted and tried for the offence.

Jury to be sworn and informed of the charge.

199. The jury shall be sworn to give a true verdict according to the evidence upon the issues to be tried by them.

When the jury have been sworn the proper officer of court shall inform them of the charge set forth in the indictment and of their duty as jurors upon the trial.

Discharge of juror by court.

200. If before or after a juror has been sworn it appears to the court from his own statement that he is not indifferent as between the prosecution and the accused or that for any other reason he ought not to be allowed or required to act as a juror on the trial the court may before any evidence has been given without discharging the whole of the jury discharge that particular juror and direct another juror to be sworn in his place.

Juror may be examined as a witness.

201. If a juror is personally acquainted with any relevant fact it is his duty to inform the judge that such is the case whereupon he may be sworn examined and cross-examined in the same manner as any other witness.

CHAPTER XII.

WITNESSES.

Attendance of witnesses.

202. Every witness duly summoned to attend and give evidence at any criminal trial before any court of criminal jurisdiction shall be bound to attend and to remain in attendance throughout the trial unless excused by the court.

Court may examine any person in attendance or recall witness.

203. Any court may at any stage of any inquiry trial or other proceeding under this Code summon any person as a witness or examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined ;

and the court shall summon and examine or recall and re-examine any person if his evidence appears to be essential to the just decision of the case.

204. Upon proof to the satisfaction of the court of the service of the summons upon any witness who fails to attend or remain in attendance or upon its appearing that any witness at the preparatory examination has entered into a recognizance to appear at the trial and has failed so to appear and that the presence of such witness is material to the ends of justice the court may by warrant cause such witness to be apprehended and forthwith brought before it to give evidence and to answer for his disregard of the summons ; and such witness may be detained on such warrant before the court or in the prison or lock-up with the view of securing his presence as a witness or in the discretion of the court he may be released on a recognizance with or without sureties conditioned for his appearance to give evidence and to answer for his default in not attending or not remaining in attendance ; and the court may in a summary manner examine into and dispose of the charge against such witness who if he is found guilty thereof shall be liable to a fine not exceeding twenty-five pounds or to imprisonment with or without hard labour for a term not exceeding three months or to both and the recognizance of such witness and his sureties (if any) entered into at the preparatory examination shall be estreated.

Compelling attendance of witnesses.

205. When the attendance of any person confined in any prison in this Colony is required in any court of criminal jurisdiction in any case cognizable therein by indictment the court before whom such prisoner is required to attend or any judge of the Supreme Court may before or during the sittings or session of the court at which the attendance of such person is required make an order upon the gaoler or other person having the custody of such prisoner to deliver such prisoner to the person named in such order to receive him ; and such person named shall at the time prescribed in such order convey such prisoner to the place at which such person is required to attend there to receive and obey such further order as to the said court seems fit.

Witnesses from prison.

206. In any criminal case prosecuted in any superior court the process of such court may be sued out for summoning as a witness in such case any person required to give evidence although such person shall reside or be within some district of the Colony other than that in or for which such court shall be appointed to be held. As often as it shall be necessary to summon any such last-mentioned person the process of the court in which such criminal case is pending shall be forwarded for execution to the deputy-sheriff of the district in which such witness shall reside or be or such other officer in such district as shall be proper for the execution of similar process when issued by or out of a superior

Summons to give evidence before Circuit Court may be served on persons beyond the district.

court of or for such last-mentioned district and such deputy-sheriff or other officer receiving such process shall execute the same in like manner as if it were the process of the superior court of or for such last-mentioned district and shall return such process together with what he has done in the execution thereof to the officer by whom the same was sued out and forwarded to him and the return made by such deputy-sheriff or other officer shall be *prima facie* evidence of the service of such process in manner and form as in such return stated and such process shall have the same force and effect and entail the same consequences as if the person so summoned had been served in the district for which the court in which the case is pending shall be held.

Payment of
expenses of
witnesses.

*207. Subject to any rules made by the Lieutenant-Governor any court or magistrate may if it or he thinks fit order payment out of public moneys of the reasonable expenses of any witness attending for the purpose of any inquiry trial or other proceeding before such court or magistrate under this Code.

CHAPTER XIII.

COMMISSION FOR THE EXAMINATION OF WITNESSES.

Taking
evidence on
commission.

208. Whenever in the course of an inquiry trial or any other proceeding under this Code it appears to the Supreme Court that the examination of a witness is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay expense or inconvenience which under the circumstances of the case would be unreasonable such court may dispense with such attendance and may issue a commission to any magistrate or where the witness is resident outside this Colony to any person authorized by the Supreme Court to take evidence on commission in civil cases without this Colony within the local limits of whose jurisdiction such witness resides to take the evidence of such witness ; provided that in any such application as aforesaid the specific fact or facts with regard to which the evidence of the said witness is required shall be set out and the court by its order may confine the examination of the witness to such facts and provided further that when the application is on behalf of the Crown the court may should it see fit so to do direct as a condition of such order that the expense necessary to the representation of accused by attorney or counsel at such examination shall be paid by the Crown.

The magistrate or other person to whom the commission is issued shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner as in the case of an ordinary preparatory examination taken before himself or where the commission is executed out of this Colony in the same manner as a commission to take evidence in civil cases is executed.

* See Ord. No. 47 of 1904, sec. two, giving power to make a tariff of witness allowances, and Govt. Notice No. 260 of 1909 (*Gazette*, 5/3/09, p. 526) for such tariff.

209. The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the court directing the commission may think relevant to the issue and the magistrate or other person to whom the commission is directed shall examine the witness upon such interrogatories. Parties may examine witness.

Any such party may appear before such magistrate or other person by counsel attorney or agent or if not in custody in person and may examine cross-examine and re-examine as the case may be the said witness.

210. After a commission under section *two hundred and eight* has been duly executed it shall be returned together with the deposition of the witness examined thereunder to the court which issued it; and the commission the return thereto and the deposition shall be open at all reasonable times to the inspection of the parties and may subject to all just exceptions be read in evidence in the case by either party and shall form part of the record. Return of commission.

Any deposition so taken may also be received in evidence at any subsequent stage of the case before another court.

211. In every case in which a commission is issued under section *two hundred and eight* the inquiry trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission. Adjournment of inquiry or trial.

CHAPTER XIV.

SPECIAL RULES OF EVIDENCE.

212. On the trial of a person charged with treason evidence cannot be admitted of any overt act not alleged in the indictment unless relevant to prove some other overt act alleged therein. Evidence on a charge of treason.

213. On the trial of a person charged with an offence of which the giving of false testimony by any person at the trial of a person charged with an offence is an element a certificate setting out the substance and effect only without the formal parts of the indictment or complaint and the proceedings at the trial and purporting to be signed by the officer having the custody of the records of the court where the indictment or complaint was tried or by his deputy is sufficient evidence of the trial without proof of the signature or official character of the person who appears to have signed the certificate. Evidence on trials for perjury and subornation.

214. On the trial of a person charged with incest: Evidence of relationship on charge of incest.
 (1) It is sufficient to prove that the woman or girl on whose person or by whom the offence is alleged to have been committed is reputed to be the lineal ascendant descendant or sister step-mother or step-daughter of the other party to the incest.

(2) The accused person is until the contrary is proved presumed to have had knowledge at the time of the alleged offence of the relationship existing between him or her and the other party to the incest.

Evidence as to counterfeit coin.

215. When upon the trial of any person it becomes necessary to prove that any coin produced in evidence against such person is false or counterfeit it shall not be necessary to prove the same to be false or counterfeit by the evidence of any officer of His Majesty's mint or other person employed in producing the lawful coin in His Majesty's dominions or elsewhere whether the coin counterfeited is current coin of any part of His Majesty's dominions or of any foreign country but it shall be sufficient to prove the same to be false or counterfeit by the evidence of any credible witness.

Evidence of common gaming-house.

*216. When any cards dice balls counters tables or other instruments of gaming used in playing any unlawful game are found in any house room tent vehicle or place suspected to be used as a common gaming-house and entered under a warrant or order issued under any law or about the person of any of those who are found therein it shall be *prima facie* evidence on the trial of a prosecution for keeping a common gaming-house that such house room or place is used as a common gaming-house and that the persons found in the room tent vehicle or place where such tables or instruments of gaming are found were playing therein although no play was actually going on in the presence of the officer entering the same under the warrant or order or in the presence of those persons by whom he is accompanied.

Evidence of common gaming-house.

*217. In any prosecution for keeping a common gaming-house it shall be *prima facie* evidence that a house room tent vehicle or place is used as a common gaming-house

(a) if any constable or officer authorized to enter any house room tent vehicle or place is wilfully prevented from or obstructed or delayed in entering the same or any part thereof; or

(b) if any such house room tent vehicle or place is found fitted or provided with any means or contrivance for unlawful gaming or with any means or contrivance for concealing removing or destroying any instruments of gaming.

Evidence of gaming-

*218. On the trial of a person charged with the offence referred to in the last two preceding sections it is not necessary to prove that any person there found playing at any game was playing for any money wager or stake.

Evidence on charge of receiving.

219. When proceedings are taken against any person for having received stolen goods knowing them to be stolen or for having in his possession stolen property or anything obtained by means of an offence knowing the same to have been stolen or so obtained evidence may be given at any stage of the proceedings

* Cf. Law No. 6 of 1889 as amended by Law No. 1 of 1892.

that there was found in the possession of such person other property stolen or obtained by some such offence as aforesaid within the period of twelve months preceding the time when such person was first charged before a magistrate with the offence for which he is being proceeded against and such evidence may be taken into consideration for the purpose of proving that such person knew the property which forms the subject of the proceedings taken against him to be stolen or obtained by some such offence as aforesaid; provided that not less than three days' notice in writing has been given to the accused that proof is intended to be given of such other property stolen or obtained by some such offence as aforesaid within the preceding period of twelve months having been found in his possession; and such notice shall specify the nature or description of such other property and the person if known from whom the same was stolen or obtained by means of an offence.

220. When proceedings are taken against any person for having received goods knowing them to be stolen or for having in his possession stolen property or property obtained by means of an offence and evidence has been given that the stolen property or property obtained by means of an offence has been found in his possession then if such person has within five years immediately preceding the time when such person was first charged before a magistrate with the offence for which he is being proceeded against been convicted of any offence involving fraud or dishonesty evidence of such previous conviction may be given at any stage of the proceedings and may be taken into consideration for the purpose of proving that the accused knew that the property which was proved to be in his possession was stolen or property obtained by means of an offence; provided that not less than three days' notice in writing has been given to the accused that proof is intended to be given of such previous conviction.

Evidence of previous conviction on charge of receiving.

*221. Upon the trial of any person accused of any offence respecting currency or coin no difference in the date or year or in any legend marked upon the lawful coin described in the indictment and the date or year or legend marked upon the false coin counterfeited to resemble or pass for such lawful coin or upon any die plate press tool or instrument used constructed devised adapted or designed for the purpose of counterfeiting or imitating any such lawful coin shall be considered a just or lawful cause or reason for acquitting any such person of such offence and it shall in any case be sufficient to prove such general resemblance to the lawful coin as will show an intention that the counterfeit should pass for it.

Evidence of counterfeit coin.

222. On the trial of a person charged with the unlawful publication of defamatory matter which is contained in a periodical after evidence sufficient in the opinion of the court has been given

Evidence on trial for defamation.

* Cf. definition of counterfeit coin and current coin in Ord. No. 26 of 1904, sec. three, and secs. eighteen to twenty-eight inclusive of that Ordinance.

of the publication by the accused of the number or part of the periodical containing the matter complained of other writings or prints purporting to be other numbers or parts of the same periodical previously or subsequently published and containing a printed statement that they were published by or for the accused are admissible in evidence on either side without further proof of their publication.

Evidence on charge of stealing against clerk or servant.

223. On the trial of a person charged with theft while employed in the Public Service of money which was the property of His Majesty or which came into the possession of the accused by virtue of his employment or charged with theft while a clerk or servant of money which was the property of his employer or which came into his possession on account of his employer an entry in any book of account kept by the accused or kept in under or subject to his charge or supervision purporting to be an entry of the receipt of any money is evidence that the money so purporting to have been received was so received by him.

On the trial of a person charged with any such offence it is not necessary to prove the theft by the accused of any specific sum of money if on the examination of the books of account or entries kept or made by him or kept or made in under or subject to his charge or supervision or by any other evidence there is proof of a general deficiency and if the jury are satisfied that the accused stole the deficient money or any part of it.

Evidence on charges relating to seals and stamps.

*224. On the trial of a person charged with any offence relating to any seal or stamp used for the purposes of the public revenue or of the Post Office in any part of His Majesty's dominions or in any foreign country a dispatch from one of His Majesty's Principal Secretaries of State or from the Governor of the Colony affected transmitting to the Governor or Lieutenant-Governor of this Colony any stamp mark or impression and stating it to be a genuine stamp mark or impression of a die plate or other instrument provided made or used by or under the direction of the proper authority of the country in question for the purpose of expressing or denoting any stamp duty or postal charge is admissible as evidence of the facts stated in the dispatch; and the stamp mark or impression so transmitted may be used by the court and jury and by witnesses for the purposes of comparison.

Impounding documents.

225. Whenever any instrument which has been forged or fraudulently altered is admitted in evidence the court judge or person who admits the same may at the request of the Crown or of any person against whom the same is admitted in evidence direct that the same shall be impounded and kept in the custody of some officer of the court or other proper person for such period and subject to such conditions as to the court judge or person admitting the same seems fit.

* (*J. Proc. (Trans.)* No. 12 of 1902, secs. *thirty-six to forty-one* inclusive.

226. If any false or counterfeit coin is produced on any trial for an offence against currency or coin the court shall order the same to be cut in pieces in open court or in the presence of a magistrate and then delivered to or for the lawful owner thereof if such owner claims the same.

Cutting counterfeit coin.

*227. Every instrument liable to stamp duty shall be admitted in evidence in any criminal proceedings although it may not be stamped as required by law.

Unstamped instruments admissible in criminal cases.

228. The accused may admit on the trial any fact alleged against him and such admission is sufficient proof of the fact without other evidence.

Admissions.

CHAPTER XV.

DISCHARGE OF PRISONER.

229. If the prosecutor having given notice of trial shall not appear to prosecute the indictment against the accused before the close of the session of that court before which he gave notice of trial it shall be competent for the accused to move the court to discharge him therefrom; and when the accused or any other person on his behalf has been bound by recognizance for the appearance of the said accused so to take his trial that the said recognizance may be discharged; and where the indictment is at the instance of a private party it shall be competent to the accused to move the court that the said private prosecutor and his sureties shall be called on their recognizance and in default of his appearance that the same be estreated.

Dismissal of charge in default of prosecution.

The accused may also apply for an order directing that the private prosecutor pay the costs incurred by the accused in preparing his defence.

Nothing in this section shall be taken to deprive the Attorney-General of the right of withdrawing any indictment at any time before the accused is given in charge to the jury and presenting a fresh indictment before the same or any other competent court.

230. The keepers of all the prisons within the district of Pretoria shall at each session of the Supreme Court for the trial of criminal cases and the keepers of all the prisons within the district of each Circuit Court at each session of each Circuit Court shall under a penalty of five pounds deliver to the court a list of all the untried prisoners confined within their respective prisons which list shall specify the date of arrest and committal for trial of each prisoner and the cause of his imprisonment and the name of the committing magistrate.

Prison returns to be delivered by the keepers of the prison to the court at the criminal sessions and Circuit Courts. *act 13 of 1904*

231. Every superior court shall at the close of each of its said sessions discharge all such prisoners as by law shall then be entitled thereto.

Liberation of prisoners by superior court.

* Cf. Proc. (Trans.) No. 12 of 1902, sec. *sixteen*, as amended by Ord. No. 16 of 1904, sec. *four*.

Discharge from imprisonment or expiration of recognizance no bar to trial.

Accused not brought to trial not obliged to find further bail.

232. Neither discharge from imprisonment nor the expiration of the recognizance shall be a bar to any person being brought to trial in any competent court for any offence for which he was formerly committed to prison or admitted to bail.

233. No person who has been admitted to bail and who has not been duly brought to trial or who has been discharged from prison pursuant to section *two hundred and thirty-one* shall be obliged to find further bail or shall be liable to be committed to prison either for examination or trial for the same offence in respect of which he was formerly admitted to bail; provided that the Attorney-General may notwithstanding the release of the accused from prison pursuant to section *two hundred and thirty-one* or the expiration of his bail at any time before the period of prescription for such offence has run out indict the accused in any competent court and if the accused having been duly served with such indictment and notice of trial fails to appear at the time mentioned in such notice the court in which he is indicted may on the application of the Attorney-General grant a warrant for his arrest and detention in prison until he can be brought to trial or until he finds bail for his appearance to stand his trial on the said indictment.

CHAPTER XVI.

PREVIOUS CONVICTIONS.

Former conviction not to be charged in indictment.

234. It shall not be lawful in any indictment against any person for any offence to charge or allege that such person had been formerly convicted of any offence; nor except as hereinafter is provided shall it be competent to prove at the trial of any person for any offence that he was formerly convicted of any offence; provided that if upon the trial of any person for any offence such person shall give evidence of his good character it shall be lawful for the prosecutor in answer thereto to give evidence of the former conviction of such person of any offence.

Nothing in this section contained shall affect the provisions of section *two hundred and twenty* of this Code or of section *eleven* of the Law of Evidence Proclamation 1902.

Notice that proof of former conviction will be offered.

235. In case any person indicted for any offence shall have been formerly convicted of any offence it shall be lawful for the prosecutor in cases in which the procedure laid down in section *seventy-three* has not been followed or where he has denied such conviction to give notice to such person that in the event of his pleading guilty or being found guilty of the offence for which he is indicted proof will be given of such former conviction.

Mode of proof of former conviction.

*236. Whenever notice shall have been duly served on such person that evidence of such former conviction would be offered against him as provided by the last preceding section of this

* As to mode of proof of previous convictions see Proc. (Trans.) No. 16 of 1902, sec. *fifty-two*, and Ord. No. 20 of 1905, sec. *ten*.

Code it shall be lawful on such person pleading guilty or being found guilty for the prosecutor before sentence is pronounced to offer to prove such former conviction or convictions and thereupon the court shall ask the prisoner whether he confesses that he is the person so appearing to have been formerly convicted and whether he was so convicted as alleged and if he shall not confess such matters or shall not have admitted them at the preparatory examination in manner laid down in section *seventy-three* then in case of such person pleading guilty the court shall empanel a jury and in case of such person not pleading guilty shall direct the jury which convicted him to try the truth of such matters or such of them as the prisoner shall not confess or shall not have admitted; and if on such trial the said previous convictions or such of them as he shall not confess or shall not have admitted shall be proved or if he shall confess or shall have admitted such previous convictions or any of them then the court shall take into account such of them as shall be proved or confessed or admitted in awarding sentence for the offence to which such prisoner shall have pleaded or of which he shall be found guilty.

CHAPTER XVII.

VERDICT : JUDGMENT.

237. When an indictment containing more counts than one is framed against the same person and when a conviction has been had on one or more of them the prosecutor may withdraw the remaining charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges unless the conviction be set aside in which case the said court (subject to the order of the court setting aside the conviction) may proceed with the trial of the charge or charges so withdrawn.

Withdrawing charges.

238. A person convicted of an offence whether on his plea of guilty or otherwise may at any time before sentence move that judgment be arrested on the ground that the indictment does not disclose any offence.

Arrest of judgment.

Upon the hearing of the motion the court may allow any such amendments of the indictment as it might have allowed before verdict.

The court may either hear and determine the motion forthwith or may reserve the question of law for the consideration of the Supreme Court as hereinafter provided and may notwithstanding pass sentence forthwith.

239. Any judge presiding at the sittings of a court at which any person is tried for an offence may reserve the giving of his final decision on questions raised at the trial; and his decision whenever given shall be considered as given at the time of trial.

Judge's decision may be reserved.

Sentence.

240. If a motion in arrest of judgment is not made or is dismissed the court may either pass sentence upon the offender forthwith or may discharge him on his recognizance as hereinbefore provided conditioned that he shall appear and receive judgment at some future session of the court or when called upon.

If the trial was held before a Circuit Court the recognizance may in the discretion of the court be conditioned to appear and receive judgment before the Supreme Court at some fixed future time or when called upon.

If sentence is not passed forthwith any judge of the court may at any subsequent sitting of the court at which the offender is present pass sentence upon him.

The court may before passing sentence receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed.

Who may issue warrant.

241. Every warrant for the execution of any sentence may be issued either by the judge who passed the sentence or by any other judge of the Supreme Court.

CHAPTER XVIII.

PUNISHMENTS.

Punishments.

242. The following punishments may be inflicted by a superior court :

(1) death ;

* (2) imprisonment with or without hard labour and with or without solitary confinement ;

† (3) detention in a reformatory ;

(4) fine ;

(5) whipping ;

(6) forfeiture of property ;

(7) putting under recognizance to keep the peace and to be of good behaviour.

Accused only liable to punishment on conviction.

243. Whenever a person doing or omitting a certain act is declared to be liable to punishment therefor it shall be understood that such person shall only be liable to such punishment after being duly convicted of such act.

Sentence of death.

244. The sentence to be pronounced upon a person who is convicted of an offence punishable with death is that he be returned to his former custody and that at a time and place to be appointed by the Lieutenant-Governor he be hanged by the neck until he is dead.

Manner of carrying out death sentences.

245. The sentence of death shall be carried into effect in the manner provided by sections *thirteen to fifteen* of The Sheriffs Proclamation 1902.

* See Act No. 38 of 1909, sec. *nine*, as to indeterminate sentences on habitual criminals.

† See Ord. No. 6 of 1906, secs. *forty-six* and *forty-seven* ; and see also Act No. 38 of 1909 as to superior court ordering detention of a juvenile in an industrial school.

246. When sentence of death is passed upon a woman she may apply at any time after the passing of such sentence for an order to stay execution on the ground that she is with child of a quick child.

Sentence of death upon a woman who is pregnant.

If such an application is made the court is required to direct one or more legally qualified medical practitioners to be sworn to examine the woman in some private place either together or successively and to ascertain whether she is with child of a quick child or not.

If upon the report of any of them on oath it appears that she is with child of a quick child the court is required to order that the execution of the sentence be respited until she is delivered of a child or until it is no longer possible in the course of nature that she should be delivered.

247. Where any person is liable under any statutory enactment to a sentence of imprisonment for life or for any term he may be imprisoned for any shorter term and where he is liable to be sentenced to imprisonment with hard labour he may be sentenced to imprisonment without hard labour. A person liable to a fine of any amount may be sentenced to pay a fine of any lesser amount.

Discretion of the court as to the amount of punishment.

Where any person is liable to any punishment other than a fine except death he may be sentenced by a superior court to pay a fine instead of or in addition to such imprisonment; provided that subject to the provisions of this Code or of any other law such fine shall not exceed one thousand pounds.

The provisions of this section shall not apply to any offence for which a minimum penalty is prescribed in the statutory enactment creating the offence.

248. Where any person is condemned to pay a fine such fine may be recovered as in the next succeeding section provided but the court inflicting the fine if it appears or is made to appear to it that the offender has not sufficient goods wherewith to satisfy the fine may in its discretion order that he be forthwith imprisoned; provided that the term of such imprisonment to be imposed in case the fine is not paid shall not either alone or together with the term of any imprisonment imposed as a punishment exceed the longest term of imprisonment which can be imposed as a punishment for the offence.

How fine is to be recovered.

249. Whenever an offender is sentenced to pay a fine the court passing the sentence may in its discretion issue a warrant for the levy of the amount by distress and sale of any movable property belonging to the offender although the sentence directs that in default of payment of the fine the offender shall be imprisoned.

Levy of fine

Such warrant when issued by a Superior Court may be executed anywhere within the Colony. If issued by a magistrate it shall authorize the distress and sale of the movable property of the

offender within the local limits of such magistrate's jurisdiction and also without such limits when endorsed by the magistrate having jurisdiction in the place where the property is found.

Suspension
of execution
of imprison-
ment.

*250. (1) When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine and the court issues a warrant under the last preceding section it may suspend the execution of the sentence of imprisonment and may release the offender upon his executing a bond with or without sureties as the court thinks fit conditioned for his appearance before such court or some other court on the day appointed for the return to such warrant such day not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realized the sentence of imprisonment shall be carried into execution at once.

(2) In any case in which an order for the payment of money has been made on non-recovery of which imprisonment may be awarded and the money is not paid forthwith the court may require the person ordered to make such payment to enter into a bond as prescribed in sub-section (1) of this section and in default of his doing so may at once pass sentence of imprisonment as if the money had not been recovered.

Levy of costs
on con-
viction for
defamation.

251. When any person is convicted of the unlawful publication of any defamatory matter which was published by means of printing the prosecutor may levy the fine if any and costs out of any property of the offender in like manner as in civil actions.

Commence-
ment of
punishment.

252. Subject to the next succeeding section a sentence of imprisonment upon a conviction before a superior court shall take effect from the day on which such sentence is passed unless it is suspended under the provisions of this Code or the offender is released on bail pending the decision of the Supreme Court on a question reserved in which cases the sentence shall take effect from the date on which he surrenders or is taken into custody to undergo his sentence.

A sentence of imprisonment upon a summary conviction shall take effect from the date of the offender being taken into custody under the conviction.

Cumulative
sentences.

253. When a person is convicted at one trial of two or more different offences or when a person under sentence or undergoing punishment for one offence is convicted of another offence the court may sentence him to such several punishment for such offence or for such last offence as the case may be as the court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration setting aside or remission of the other in such order as the court may direct unless the court directs that such punishments shall run concurrently.

* See also Act No. 38 of 1909, sec. *twelve*, in the case of all sentences other than sentence of death.

As amended
by Act 13
of 1911

254. A prisoner who escapes from lawful custody while undergoing a sentence of imprisonment is liable upon recapture to undergo the punishment which he was undergoing at the time of his escape for a term equal to that during which he was absent from prison after the escape and before the expiration of the term of his original sentence whether at the time of his recapture the term of that sentence has or has not expired.

Escaped
prisoners.

255. When any person shall be sentenced to imprisonment it shall be lawful for the Lieutenant-Governor to order from time to time the removal of such person during the period prescribed for his imprisonment from any prison in which he is confined to any other prison or place within this Colony.

Imprisonment.

The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

If before the expiration of the term of imprisonment fixed in default of payment such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid the imprisonment shall terminate.

256. When any person is liable to be sentenced to be whipped such punishment may be inflicted in addition to or in substitution for any punishment to which the offender is otherwise liable and the number of strokes to be inflicted not to exceed fifty shall subject to the provisions of any statutory enactment be in the discretion of the court. The court is required to specify in the sentence the number of strokes which are to be given.

Whipping.

257. The punishment of whipping shall not be inflicted unless a medical officer is present certifies or if there is not a medical officer present unless it appears to the magistrate or officer present that the offender is in a fit state of health to undergo such punishment.

Whipping
not to be
inflicted
unless
offender in
a fit state.

If during the execution of a sentence of whipping a medical officer certifies or it appears to the magistrate or officer present that the offender is not in a fit state of health to undergo the remainder of the sentence the whipping shall be finally stopped.

258. In any case in which under the last preceding section a sentence of whipping is wholly or partially prevented from being executed the offender shall be kept in custody until such sentence be revised by the court which passed it or if such court be not sitting by the Supreme Court and the Court may at its discretion either remit such sentence or sentence the offender in lieu of whipping or in lieu of so much of the sentence of whipping as was not executed to imprisonment for any term not exceeding twelve months which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Procedure if
whipping
cannot be
inflicted.

Nothing in this section shall be deemed to authorize any court to inflict imprisonment for a term exceeding that to which the accused is liable by law or that which the said court is competent to inflict.

Minors and females.

259. When a male person under the age of sixteen years is convicted of any offence the court may sentence him to be whipped in substitution for any other punishment.

No female shall be whipped or put to hard labour on any road street or public place.

Whipping and solitary confinement.

*260. When an offender is sentenced to whipping or solitary confinement such sentence shall be carried out in conformity with such regulations and restrictions as may be issued by the Lieutenant-Governor for the purpose of preventing injurious consequences to such offender.

Recognizances to keep the peace and be of good behaviour.

261. A person convicted of an offence not punishable with death may instead of or in addition to any punishment to which he is liable be ordered to enter into his own recognizances with or without sureties in such amount as the court thinks fit that he shall keep the peace and be of good behaviour for a time to be fixed by the court and may be ordered to be imprisoned until such recognizance with sureties if so directed is entered into; provided that the imprisonment for not entering into the recognizance shall in no case exceed one year.

Recognizances to come up for judgment.

†262. When a person is convicted of an offence not punishable with death the court may instead of passing sentence discharge the offender upon his entering into his own recognizances with or without sureties in such sum as the court may think fit to appear and receive judgment at some future sittings of the court or when called upon.

Discharge without verdict.

†263. In any case where the court considers that the offence deserves no more than a nominal punishment the court may in its discretion after all the evidence has been heard direct the discharge of the accused without taking any verdict and such discharge shall have all the effects of an acquittal.

CHAPTER XIX.

COSTS, COMPENSATION, AND RESTITUTION.

Court may order accused to pay compensation.

†264. (1) When any person shall have been convicted of an offence which has caused damage to or loss of property belonging to some other person the court trying the case may after recording such conviction and upon the application of the injured party forthwith award him compensation for such damage or loss where the compensation claimed does not exceed two hundred pounds

* For regulations see Government Notice No. 989 of 1903, *Gazette* (11th September, 1903), p. 935.

† See, however, Act No. 38, 1909, section eleven.

(2) For the purpose of determining the amount of compensation or the liability of the accused therefor the court may refer to the proceedings and evidence at the trial or hear further evidence either upon affidavit or verbal.

(3) In all cases the court may at any stage of the proceedings refer the injured party claiming compensation under this section to his remedy under the ordinary law.

(4) The court may award and adjudge a person convicted upon a private prosecution the costs and expenses of such prosecution in addition to the sum (if any) awarded under sub-section (1) of this section.

(5) Any award of compensation costs or expenses under this section may at the instance of any interested party be made a civil judgment of the court making the award by filing a copy of such award certified by the proper officer in such court and thereon such award shall be recorded and have the same effect as any civil judgment of such court.

(6) Any costs awarded shall be taxed according to the scale in civil cases of the court of which the award is made a judgment unless a special tariff for such cases shall have been framed by some competent authority.

(7) Where any moneys of the accused have been taken from him upon his apprehension the court may order payment in satisfaction or on account of the award as the case may be to be made forthwith from such moneys.

(8) Any person against whom an award has been made under this section shall not be liable at the suit of the person in whose favour an award has been so made to any other civil proceedings in respect of the injury for which compensation has been awarded.

265. When any accused person has been convicted of theft or unlawfully obtaining any property and it appears to the court by the evidence that he sold such property or part of it to any person who had no knowledge that it was stolen or unlawfully obtained and that money has been taken from the accused on his apprehension the court may on the application of such purchaser and on restitution of such property to its owner order that out of the money so taken from the prisoner (if it is his) a sum not exceeding the amount of the proceeds of the sale be delivered to such purchaser.

Compensation to innocent purchaser of stolen property.

266. If any person is convicted of stealing or knowingly receiving or otherwise unlawfully obtaining any property such property may be restored to the owner or his representative on application by him.

Restitution of stolen property.

In every such case the court before which such person is tried for any such offence shall have power to award from time to time writs of restitution in respect of the said property or to order the restitution thereof in a summary manner.

If it appears before any award is made that any valuable security has been *bona fide* paid or discharged by any person liable to the payment thereof or being a negotiable instrument has been *bona fide* taken or received by transfer or delivery by any person for a just and valuable consideration without notice or without any reasonable cause to suspect that the same had by any offence been stolen or otherwise unlawfully obtained or if it appears that the property stolen or otherwise unlawfully obtained has been transferred to an innocent purchaser for value who has acquired a lawful title thereto the court shall not award or order the restitution of such security or property.

CHAPTER XX.

APPEALS.

Appeal from
arrest of
judgment.

267. When the court before which any person is convicted arrests judgment the court is required on the application of the counsel for the prosecution to reserve a case for the consideration of the Supreme Court.

On the hearing of the case the Supreme Court may affirm or reverse the order arresting judgment. If the order is reversed the court is to direct that judgment be pronounced upon the offender and he is to be ordered to appear at such time and place as the court may direct to receive judgment and any justice may issue his warrant for the arrest of the offender.

An offender so arrested may be admitted to bail by order of the Supreme Court or a judge thereof which order may be made at the time when the order directing judgment to be pronounced is made or afterwards.

Accused may
appeal on
ground of
irregularity
or illegality of
proceedings.

268. If any accused person who shall be tried upon any indictment in a superior court shall think that any of the proceedings of the court before which the trial takes place are irregular or not according to law it shall be lawful for him either during his trial or after his conviction to apply to such court to direct a special entry to be made on the record showing the nature of the proceedings alleged to be irregular or illegal. If such a special entry be directed to be made it shall be drawn up by the registrar of the court and the accused and the prosecutor or their counsel and attorneys shall be permitted to see it and to copy it and if either party shall object to its terms it shall be settled by the judge of the court before which the case was tried.

Leave to be
applied for.

269. If any person convicted of any offence shall obtain leave for such a special entry to be made on the record as is hereinbefore provided for it shall be lawful for him by leave of the court before which the case shall have been tried to appeal against his conviction on the ground of the irregularity or illegality of such proceedings as stated in such special entry aforesaid; provided that within

fourteen days after verdict notice of such appeal shall be given to the registrar of the court appealed from. Such registrar shall forthwith after receiving such notice give notice of appeal to the Attorney-General and transmit to the Registrar of the Supreme Court an authenticated copy of the record including copies of the evidence whether oral or in writing taken or admitted at the trial and of the special entry made on the record in manner aforesaid.

270. If any question of law shall arise on the trial of any person for any offence in a superior court it shall be lawful for such court of its own motion or at the request either of the prosecutor or of the accused to reserve such question for the consideration of the Supreme Court sitting as a Court of Appeal in criminal cases. If the court shall determine to reserve any such question and the accused shall be convicted the court shall state the question or questions reserved and shall direct such case to be specially entered in the record and a copy thereof to be transmitted to the Supreme Court.

Reservation of question of law.

271. The execution of the sentence of a court shall not be suspended by reason of any appeal against a conviction or by reason of a question having been reserved for consideration of the Court of Appeal in criminal cases unless

When execution of sentence may be suspended.

(a) the sentence shall be that the accused suffer death or be whipped in either of which cases the sentence shall not be executed until the appeal or question reserved shall have been heard and decided; or

(b) the court from which the appeal is made or by which the question is reserved shall think fit to order that the accused be admitted to bail or if he is sentenced to any punishment other than simple imprisonment that he be treated as an unconvicted prisoner until the appeal or the question reserved shall have been heard and decided; provided that when the accused is ultimately sentenced to imprisonment the time during which he is so released on bail shall be excluded in computing the term for which he is so sentenced.

272. In case of any appeal against a conviction or any question being reserved as aforesaid it shall be lawful for the Supreme Court sitting as aforesaid to

Powers of court in cases where question of law is reserved.

(a) confirm the judgment of the court below in which case if the accused having been convicted and admitted to bail is in court the court may forthwith commit him to custody for the purpose of undergoing any term of imprisonment to which he may have been sentenced; or

(b) order that the judgment shall be set aside notwithstanding the verdict which order shall have for all purposes the same effect as if the accused had been acquitted; or

(c) remit the case to such court if it has not delivered judgment in order that it may deliver judgment; or

(d) give such judgment as ought to have been given at the trial; or

(e) make such other order as justice may require;

provided that no conviction shall be set aside by reason only of some irregularity or illegality whereby the accused was not prejudiced in his defence or because evidence was improperly admitted or rejected by which no substantial wrong was in the opinion of the Supreme Court done to the accused.

Order of court to be certified.

273. The order or direction of the Supreme Court shall be certified under the hand of the presiding judge to the Registrar of the Court before which the case was tried and such order or direction shall be carried into effect and shall authorize every person affected by it to do whatever is necessary to carry it into effect.

Power of review and appeal from inferior courts not affected.

274. Nothing herein contained shall in any way affect or limit the powers and jurisdiction of the Supreme Court as a court either of review or appeal in criminal cases in relation to inferior courts.

CHAPTER XXI.

PARDON AND COMMUTATION.

Prerogative.

275. Nothing in this Code shall affect His Majesty's Royal Prerogative of mercy.

Governor or Lieutenant-Governor may commute sentence.

276. In any case in which the Governor or Lieutenant-Governor is authorized to extend the Royal mercy conditionally to an offender under sentence of death he may without the consent of the offender commute the punishment for any other punishment provided by law.

Any such commutation is to be signified in writing to the Attorney-General and the Attorney-General is required thereupon to allow the offender the benefit of the conditional pardon and to make an order that he be punished in the manner directed by the Governor or Lieutenant-Governor. Such allowance and order shall have the effect of a valid sentence passed by the court before which the offender was convicted.

Effect of pardon.

277. A pardon by the Governor or Lieutenant-Governor on behalf of His Majesty shall have the effect of discharging the convicted person from the consequences of the conviction.

Conditional remission of sentence by the Governor or Lieutenant-Governor.

*278. In any case in which the Governor or Lieutenant-Governor is authorized on behalf of His Majesty to extend the Royal mercy to an offender under sentence of imprisonment with or without hard labour he may extend mercy upon condition of the offender entering into a recognizance conditioned as in the case of offenders discharged by the court upon suspension of the execution of a sentence. The offender is thereupon liable to the same obligations and to be dealt with in all respects in the same manner as a person discharged by the court on recognizance upon such suspension.

* See also Act No. 38 of 1909, secs. *nine* and *ten*; and, in addition, see Governor-General's Letters Patent forbidding remission in the case of a British subject on condition that he leave the country.

CHAPTER XXII.

MISCELLANEOUS.

279. Unless some other period is expressly provided the notice of trial and any other notice or document required to be served upon the accused shall be served by delivering the same to the accused ten days at least before the day specified therein for his trial or where the accused cannot be found by leaving a copy of such notice or document with some one of his household at his dwelling-house or if no person belonging to his household can be found then by affixing such copy to the principal outer door of the said dwelling-house.

How notice is to be served.

Where the accused has been admitted to bail any such notice or document may either be served upon him personally or left at the place specified in the recognizance as that at which notice of trial and service of the indictment may be made.

The officer serving any such notice as aforesaid shall forthwith deliver or transmit to the official from whom he shall have received such notice for service a return of the mode in which such service was made and such return shall be *prima facie* evidence that the service of such notice was made in manner and form as in such return stated.

280. The judges of the Supreme Court may make general rules prescribing forms of complaints summons depositions indictments judgments records convictions warrants and recognizances and other forms to be used in any court or before a magistrate when holding a preparatory examination in respect of any offence; and every form so prescribed shall be deemed sufficient for the purposes and sufficiently to state the offence or matter for or in respect of which it is prescribed and may be varied as circumstances may require.

Power to make rules.

* The judges may also make general rules not inconsistent with the provisions of this Code for regulating the sitting of the courts for criminal purposes and the proceedings upon the trial of persons charged with offences for regulating bail and costs for regulating the duties of the officers of the court and generally for every other matter deemed expedient for better attaining the ends of justice and carrying the provisions of the law into effect.

281. The provisions of this Code shall apply to all proceedings in inferior courts except

(a) where it appears from the context that such provisions are not applicable to inferior courts;

Certain provisions to apply to inferior courts

* For rules, see—

- Government Notice No. 275 of 1903 *Gazette* (27th March, 1903), p. 558.
- Government Notice No. 316 of 1903 *Gazette* (3rd April, 1903), p. 602.
- Government Notice No. 408 of 1903 *Gazette* (1st May, 1903).
- Government Notice No. 1094 of 1903, *Gazette* (2nd Oct., 1903), p. 933.
- Government Notice No. 410 of 1903, *Gazette* (12th May, 1905).
- Government Notice No. 1273 of 1908, *Gazette* (24th December, 1908).

(b) where such provisions relate to matters of procedure which are provided for by any law rule or regulation prescribing the procedure of inferior courts.

SCHEDULE A.

REPEALS.

LAW.	EXTENT OF REPEAL.
Ordinance No. 5 of 1864 (No. 9 of 1866) Law No. 1 of 1895 Law No. 7 of 1896	The whole. The whole. The whole.

SCHEDULE B.

Treason.
Murder.
Culpable Homicide.
Rape.
Robbery.
Assault with intent to commit any of these offences or in which a dangerous wound is given.
Arson.
Housebreaking with intent to commit an offence.
Theft.

No. 2 of 1903.]

[Promulgated 16th January, 1903.]

ORDINANCE

TO AMEND THE LIQUOR LICENSING ORDINANCE, 1902.

Assented to 13th January, 1903.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

The Liquor Licensing Ordinance 1902 is hereby amended by adding the following proviso to section *thirty-six* :
“ provided that nothing herein contained shall apply to mynpachts on the farm Elandsfontein No. 1 numbered 302A 302B 333 and 337 on which the townships of Germiston and Georgetown are situated.”

Amendment
of section
thirty-six
of Ordinance
32 of 1902.

No. 3 of 1903.] [Promulgated 23rd January, 1903.]

ORDINANCE

* CONFERRING BORROWING POWERS ON JOHANNESBURG MUNICIPALITY.

Assented to 21st January, 1903.

WHEREAS it is expedient that the Municipality of Johannesburg be empowered to raise moneys by the issue of stock and otherwise for the purposes of the municipality;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:

I. PRELIMINARY.

Name of
stock.

1. The stock issued in pursuance of this Ordinance shall be known collectively as the "Johannesburg Municipal Stock".

Definitions.

2. In this Ordinance unless the context otherwise by necessary implication requires:

"Municipality" means the municipality of Johannesburg as constituted for the time being;

"the council" means the council for the municipality of Johannesburg established under Proclamation No. 16 of 1901 and their successors in office;

"town clerk" means the town clerk of the municipality and includes any person for the time being acting in such capacity;

"town treasurer" means the treasurer of the municipality and includes any person for the time being acting in such capacity;

"registrar" means the person for the time being appointed by the council to have the care and management of the nominal register of inscribed stock hereinafter provided.

II. ISSUE OF STOCK.

Power to
issue stock.

† 3. The council may from time to time by the issue of stock subject to the provisions of this Ordinance raise moneys for the purposes of the municipality in such amounts as the Lieutenant-Governor shall authorize by writing under the hand of the Colonial Secretary.

* The provisions of this Ordinance were applied to Pretoria Municipality by Ord. I (Priv.) 1906, section *four*; see Ord. No. 9 of 1903 conferring special borrowing powers for certain purposes by the issue of bills; Ord. No. 23, 1903; Ord. I (Priv.), 1904; Ord. IV (Priv.) 1904.

† The sum of £3,000,000 has been authorized by Govt. Notice No. 709 of 1903 (*Gazette*, 17th July, 1903, p. 520). The Town Council was authorized to raise a loan of £2,500,000 by Govt. Notice No. 222, 1905 (*Gazette*, 10th March, 1905).

4. Every such power to raise money shall be construed to authorize the council to create such an amount of stock and from time to time to issue such nominal amounts thereof as will in the aggregate according to the price of issue produce the actual amount of money for the time being raisable under such power.

Stock to be created to such amount as will produce actual amount of money raisable.

5. In any such issue of stock the following provisions shall be observed that is to say :

Provisions as to issue.

(a) the stock shall be redeemable within a period fixed by the written authority aforesaid or in default thereof by the resolution of the council referred to in the next succeeding sub-section determining upon the issue of the stock but so that such period shall not in any case exceed the term of sixty years from such issue ;

(b) the resolution of the council determining upon the issue of any stock shall fix subject to the provisions of this Ordinance the rate of interest to be paid in respect of the stock so issued and shall include such subsidiary provisions as may be advisable for the convenient issue of the stock and the service of the same when issued. The provisions of such resolution (hereinafter called the " conditions of issue ") shall not be subsequently varied ;

(c) all such stock shall be entitled to the benefit of the charge and security hereinafter expressed and the interest and Redemption Funds hereinafter constituted and the provisions for enforcing payment hereinafter contained and no holder of stock shall have any priority or preference by reason of the date of issue of the stock held by him or on any other ground ;

(d) the stock shall be issued at and for such a price in money as the council shall resolve and the council may from time to time by subsequent resolution alter or modify as regards any stock remaining unissued the price fixed by any previous resolution relating thereto ;

(e) the issue of any stock determined upon shall be in such amounts at such times and payable in such manner whether by instalment or otherwise and upon and subject to such reasonable conditions as the council shall from time to time by resolution determine and the certificates of stock shall be made out in such sums or amounts as shall be found expedient ;

(f) the council may notwithstanding that the whole nominal amount of any particular issue of stock has not been issued resolve with the authority of the Lieutenant-Governor as hereinbefore provided to make a further issue of stock differing from such previous issue as to rate of interest or term or other incidents of redemption ;

(g) the council may at any time resolve not to proceed with the issue of any stock which has been authorized under any previous resolution but has not been issued whether the said stock be the whole or a part of the stock so remaining unissued ;
(h) the council may out of the proceeds of any stock pay the brokerage commission allowances or other costs or expenses of and incident to the issue of such stock.

Varieties of stock.

6. The stock shall be issued as inscribed stock or as stock to bearer as may be prescribed in the conditions of issue or where there is no express provision in such conditions then in either form according as the applicant therefor shall before the actual issue request in writing. Any stock which has been issued in the one form in the absence of such express provision as aforesaid may be converted into the other form pursuant to the provisions hereinafter contained.

In default of express provision or request stock to be inscribed.

7. In default of such express provision as aforesaid or of such written request from the applicant the stock shall be issued as inscribed stock.

Obligations to pay interest and principal.

8. The council shall pay or cause to be paid the interest on the stock as and when such interest shall be due and the principal thereof at the time fixed for the payment thereof in accordance with the provisions of this Ordinance.

III. INSCRIBED STOCK.

Certificate of inscribed stock.

9. The certificates for inscribed stock shall be in the form set forth in the schedule hereto with such variations if any as circumstances may require.

Register of inscribed stock.

10. The council shall cause a register (hereinafter called the "nominal register") of inscribed stock to be kept in one or more books and there shall be entered in such register the following particulars arranged under separate headings in respect of each separate issue of inscribed stock namely :

(a) the names and addresses of the owners for the time being of any amount thereof ;

(b) a statement of the amount of such stock held by each owner and the date at which the name of any person was entered in the nominal register in respect of such stock.

Register.

11. The nominal register may be in duplicate and shall be kept either under the supervision of the council at the council's office or by such bank as the council shall from time to time entrust with the keeping of such register or jointly by the council and by such bank.

Effect of register.

12. Such nominal register shall be *prima facie* evidence of the title of any person in respect of stock of which he is entered as owner and of any other matters hereby directed or authorized to be inserted therein.

13. Any person may inspect the nominal register at any reasonable time upon payment of such fee not exceeding two shillings and sixpence as may be fixed by the council and shall be entitled to obtain from the town treasurer or the registrar copies or extracts of the register certified by him to be true copies or extracts upon payment of such fee as the council shall fix not exceeding five shillings (three figures to count as one word) with the addition of sixpence for every fifty words thereof and any copy or extract so certified shall be admissible in evidence but without prejudice to the right of any person to disprove the correctness thereof. Inspection.

14. On demand in writing from a person entitled to inscribed stock paid up in full for which no certificate has been issued the council shall make out and give to such person free of charge a certificate or certificates thereof in form aforesaid in the name or names either of himself or of such other persons as he shall direct and such certificate or certificates shall be *prima facie* evidence of the title of the person named therein to the stock therein specified. Issue of stock certificate.

15. Inscribed stock shall be transferable by the owner for the time being either by entry in the books of the council or by a deed. Transfer of inscribed stock.

16. The following provisions shall apply in the case of stock transferred by entry in the books of the council; Transfer in book.

(a) the registrar shall keep books (herein referred to as "Inscribed Stock Transfer Books") wherein transfers of inscribed stock so transferred shall be entered;

(b) every such entry shall be conceived in proper words for the purpose of transfer and shall be signed by the person making the transfer or if absent by his agent thereunto lawfully authorized by writing under his hand;

(c) a fee not exceeding two shillings and sixpence shall be paid to the registrar upon any such transfer;

(d) the registrar shall enter in the nominal register of inscribed stock a memorial relating to the transfer containing the particulars specified in section *ten* hereof;

(e) the registrar shall on demand in writing by any person or party to a transfer or his legal representatives or other person thereunto lawfully authorized in writing under his hand give to such person a certificate signed by himself stating the date and other short particulars of such transfer for which certificate a fee not exceeding two shillings and sixpence shall be paid.

17. In the case of the transfer of any inscribed stock by deed the following provisions shall apply: Transfer by deed.

(a) the deed of transfer may be either: (1) an instrument separate from the stock certificate or (2) a cession endorsed on the stock certificate;

(b) the deed shall in either case be in the form in this behalf set forth in the schedule hereto with such variations if any as the circumstances may require and the deed shall relate only to the transfer and shall not contain any recital trust power or proviso whatever ;

(c) when the deed is a separate instrument the same after due execution shall be delivered to and kept by the registrar who shall enter in the nominal register of inscribed stock a memorial thereof containing the particulars specified in section *ten* hereof ;

(d) when the deed is by way of cession endorsed on the stock certificate the person to whom such stock is ceded shall produce the stock certificate to the registrar who shall thereupon pursuant to section *ten* hereof enter in the nominal register the name of such person as the owner of the inscribed stock comprised in such stock certificate and the other particulars specified in section *ten* hereof ;

(e) in case of any such transfer as aforesaid the council or the registrar shall on demand and delivery up of the stock certificate transferred deliver a new stock certificate to the person entitled thereto. A fee of five shillings shall be paid on the registration of any such transfer ;

(f) until any such transfer has been registered as aforesaid the council shall not be affected by the same or any notice thereof or any claims or demands purporting to be by virtue thereof.

Investigation
as to transfer.

18. Before any transfer is entered in the register of inscribed stock the council or the registrar may if the circumstances appear to make it expedient require proof to its or his satisfaction of the title of any person claiming a right to make or receive or be entitled to a transfer.

Closing the
registers.

19. The council may as regards the inscribed stock or any part thereof cause the nominal register of inscribed stock and the inscribed stock transfer books to be closed at such time or times as they may think fit but so that such books be not at any one time kept closed for more than fifteen days. Due notice shall be given of such intended closing by notice published in one or more newspapers circulating in Johannesburg and in any other place where such books may be kept at least fourteen days before the date of such closing. During the period for which such books are closed no transfer of inscribed stock shall be registered.

IV. STOCK TO BEARER.

Form of
certificate.

20. The certificates for stock to bearer shall be in the form set forth in the schedule hereto with such variations as the circumstances may require.

21. On demand in writing from a person entitled to stock to bearer for which no certificate has been issued the council shall make out and give to such person free of charge a certificate or certificates thereof in form aforesaid. Issue of certificate

22. Annexed to each certificate of stock to bearer shall be coupons for the payment of the interest thereon covering such a period as the council shall determine. At the end of that period fresh coupons may be issued for such further period as the council shall determine and so on for successive periods. But the council may in lieu of issuing fresh coupons in respect of any certificate of stock to bearer give in exchange a fresh certificate with coupons. Coupons.

23. Stock to bearer and coupons relating thereto shall respectively pass and the title thereto be transferred by delivery of the stock certificate or the coupons as the case may be. Transfer of bearer stock and coupons.

V. CHANGES OF FORM OF STOCK.

24. Subject to the provisions in this behalf contained in section *six* of this Ordinance; Change of inscribed stock to bearer stock and vice versa.

(a) any person registered as the owner of inscribed stock may on delivering up his stock certificate require the council to issue to him a certificate or certificates of stock to bearer for and in respect of such inscribed stock and such certificate or certificates shall be made and issued accordingly;

(b) any person holding a certificate of stock to bearer may on delivering up such certificate with all unpaid coupons thereto belonging require the council to issue to him a certificate or certificates of inscribed stock and such certificate or certificates shall be made and issued accordingly and such person shall be entered in the nominal register as the owner of such stock;

(c) any certificates and coupons delivered up as aforesaid shall be cancelled;

(d) all necessary entries shall be made in the proper books to keep a true record of the transactions;

(e) a fee not exceeding five shillings shall be paid for each new certificate so issued.

VI. INTEREST ON STOCK.

25. The interest on inscribed stock shall be paid at such place or places as the council may fix in the conditions of issue by cheque or banker's draft to be posted to the registered address for the time being of each registered owner of such stock. Payment of interest on inscribed stock.

26. The posting by or on behalf of the council of a letter containing a cheque or draft addressed to an owner of inscribed stock at his registered address shall as respects the liability of the council or of any bank entrusted with the payment of such interest or any official thereof be equivalent to the delivery of the same to such owner himself. Payment through the post.

Joint owners. 27. Where more persons than one are registered as the joint owners of inscribed stock a cheque or draft as aforesaid in payment of the interest on such stock may be delivered or posted to any one of them and any one of them may give an effectual receipt for any interest due unless as to either matter notice to the contrary has been given in writing to the council or the bank aforesaid.

Investigation of title. 28. The council or such bank as aforesaid before allowing the payment of any interest on any inscribed stock may if the circumstances of the case appear to make it expedient require evidence of the title of any person claiming such interest. And in such case the evidence shall be an affidavit of one or more competent persons or of such other nature as the council or the bank aforesaid may require.

Interest on bearer stock. 29. With respect to interest on stock to bearer ;
(a) each coupon shall state the amount of interest payable in respect thereof and the date of payment ;
(b) payment to the bearer of a coupon of the amount expressed therein at or after the date named shall be a full discharge to the council and shall exempt the council the bank aforesaid and any official thereof from all liability in respect of that coupon and the amount represented thereby ;
(c) the provisions of the last preceding section shall apply *mutatis mutandis* with regard to coupons and the payment of the interest thereby represented.

VII. SECURITY FOR STOCK.

First charge on the municipal rates and revenue. 30. All stock issued under this Ordinance and any interest due thereon shall be charged indifferently on the whole of the lands rents and property belonging to the municipality and on all rates levied by the council under Proclamation No. 38 of 1902* or under any law for the time being empowering the council to levy a general rate upon property subject to all charges existing on the taking effect of this Ordinance and shall be a first charge thereon after those charges.

VIII. INTEREST AND REDEMPTION FUNDS.

Creation of Interest and Redemption Funds. 31. For payment of interest on the stock and for redemption and extinction of the stock there shall be created two funds hereinafter called the Interest Fund and the Redemption Fund respectively which shall be maintained applied and dealt with in manner hereinafter provided.

Payments to Interest Fund and Redemption Fund. 32. (1) There shall be paid and transferred to the Interest Fund in each year for the payment of interest on the stock a sum equal to the aggregate amount of all the interest payable in that year on the outstanding stock.

* Repealed by Ordinance No. 43, 1903.

(2) There shall be paid and transferred to the Redemption Fund the sums specified below as and when they become payable or receivable that is to say ;

- (a) the net proceeds of any sales of fixed property belonging to the municipality ;
- (b) all other incomings of the council or the municipality in respect of any sales of rights or interests in the nature of or analogous to fixed property easements or servitudes ;
- (c) the income of the investments of the Redemption Fund ;
- (d) the payments mentioned in section *fifty-five* hereof ;
- (e) any payments which may be required under the provisions of sub-section (2) of section *thirty-six* of this Ordinance.

33. The Redemption Fund so far as not immediately required for the purposes in the next section mentioned shall be invested as the council may direct in one or more of the stocks funds and securities following namely ;

Investment of Redemption Fund.

- (a) the stocks funds and securities from time to time styled in the law of England "trustee securities" ;
- (b) the stocks and securities issued or guaranteed by the Government of any Colony or dependency of the British Empire ;
- (c) the debentures mortgages or debenture stock of any railway tramway dock harbour or waterworks corporation created by special legislative enactment within the British Empire ;
- (d) the municipal fund or town debt of any town in South Africa constituted by or pursuant to any general or special statute ordinance or statutory enactment ;
- (e) Johannesburg municipal stock ; provided that any stock so purchased shall not again be sold.

34. The Redemption Fund shall be applied from time to time in redemption of the stock according to the provisions of this Ordinance and may also be applied in the manner and subject to the conditions herein provided ;

Application of Redemption Fund.

(1) where any power has been conferred on the council under the provisions of sections *three* and *four* of this Ordinance to raise money by the issue of stock such power may be exercised either wholly or partially by using for this purpose any moneys for the time being standing to the credit of the Redemption Fund ;

(2) in every case where the council proposes to use the Redemption Fund for the above-mentioned purpose it shall first pass a resolution authorizing the withdrawal of the moneys from the Redemption Fund in accordance with the conditions herein prescribed and specifying the account of the said fund from which the moneys are to be withdrawn and if they are to be withdrawn from more than one of such accounts the amount to be withdrawn from each such account ;

(3) the amount to be withdrawn shall be equal to the sum which is to be raised by, this means ;

(4) immediately on the withdrawal of such moneys as aforesaid the same payments shall be made and the same procedure observed *mutatis mutandis* as if such amount had been raised by an issue of new stock bearing interest at the same rate as the stock represented by the account from which the said amount was withdrawn and repayable at the same date as such stock is repayable ; provided that all sums payable as aforesaid by way of interest on the amount so withdrawn shall be paid into the Redemption Fund to the account from which such amount was withdrawn.

Redemption
Fund not to
be pledged.

35. The council shall not create or purport to create any lien or charge upon or against the Redemption Fund or any part thereof or any moneys applicable thereto whether expressed to be subsequent or subject to the sole charge hereinbefore expressed or otherwise.

Accounts of
Redemption
Fund.

36. (1) All proper books and accounts shall be kept and entries made to show from time to time the position of the Redemption Fund and in particular the investments thereof. Full and detailed accounts of the Redemption Fund and the investments thereof and of all payments and receipts in connection therewith during the year shall be published yearly with the general accounts of the municipality in a form to be approved by the Colonial Secretary and a copy thereof shall be furnished to the Colonial Secretary.

(2) For the purpose of such accounts the council shall each year cause a valuation to be made of the Redemption Fund and shall at the same time ascertain what would be the amount at the date of such valuation of a sinking fund constituted by equal annual payments in respect of each issue of stock sufficient if accumulated with compound interest at the rate of three and a half per centum per annum to redeem the whole outstanding stock of such issue at the expiration of thirty years from the issue thereof or at the expiration of any period being less than thirty years which may have been prescribed for the redemption of such stock. If it shall then appear that the value of the Redemption Fund is less than the amount of a sinking fund so constituted and accumulated as aforesaid the council shall cause a further payment to be made into the Redemption Fund so that the value thereof shall not be less than the said amount.

(3) All such books and accounts shall be audited by the Auditor-General of the Colony and for that purpose shall at all reasonable times be open for inspection by him or by any person authorized by him in writing thereto. The accounts referred to in sub-section (1) hereof shall not be passed by the council in any year without a certificate from the said Auditor-General that he is satisfied both as to the correctness of the accounts and books and as to the maintenance of the Redemption Fund at the amount required by this Ordinance.

37. Any owner of stock or person authorized by him in writing may inspect the books and accounts of the Redemption Fund at any reasonable time upon payment of such fee not exceeding two shillings and sixpence as may be fixed by the council and shall be entitled to obtain from the town treasurer copies or extracts of or from the said books and accounts certified by him to be true copies or extracts upon payment of such fee as the council shall fix not exceeding five shillings with the addition of sixpence for every fifty words (three figures to count as one word).

Inspection of
books and
accounts.

IX. REDEMPTION.

38. The council may at any time purchase the stock at such price as may be agreed upon. The purchase money may be paid out of any moneys other than the Redemption Fund which may be available for such purpose. The stock purchased shall be immediately cancelled.

Purchase for
cancellation.

39. Any stock not previously cancelled shall on the date fixed for redemption by the conditions of issue become payable at the nominal amount thereof and such amount shall together with any interest then due be paid to the owner of any inscribed stock or the bearer of any certificate of stock to bearer.

Redemption.

X. ENFORCING PAYMENT OF STOCK.

40. If at any time any interest due on any stock remain unpaid for three months after demand therefor in writing has been lodged with the town treasurer by the person entitled thereto or his duly authorized representatives proceedings to enforce payment may be instituted and proceeded with subject to the provisions contained in sections *forty-one forty-two* and *forty-three* hereof.

Default of
payment of
interest.

41. The owner of any stock in respect whereof such default has been made may apply to any competent court for the appointment of a receiver of the assets hereby charged with the payment of the principal and interest of the stock. On the hearing of such application the court may make such order and give such directions as under the circumstances shall seem expedient for raising and payment of the moneys due. In particular the court may order and declare that a rate or rates of such amount or amounts as it shall fix be levied upon all rateable property within the municipality. And such rate so ordered shall have the same incidence as any rate imposed by the council and may be enforced in like manner and the proceeds thereof shall be paid into court or otherwise as the court shall direct.

Proceedings
to enforce
payment.

42. In the event of such default in payment of interest in whole or part being continued for a further period of three months the owner or owners aforesaid may apply to the court for a declaration that the principal of all the stock for the time being outstanding has become due and the court shall make such

Further
proceedings.

declaration accordingly with all such consequential orders and declarations unless satisfied that in the interests of owners of stock it would be advisable to otherwise deal with the application and in such case the court may postpone the application and may ultimately make or refuse an order according to the circumstances.

Default in payment on expiration of period for redemption.

43. In case default shall be made in payment of the principal of any stock which has become repayable for one month then the like proceedings *mutatis mutandis* as specified in sections *forty-one* and *forty-two* may be instituted and proceeded with at the suit or on the application of any owner of stock. The court may also order a realization of the Redemption Fund or a sale of any assets charged as aforesaid and may make such order as it shall think fit for the due carrying out of such sale or realization and for the application of moneys raised thereby.

Regard to wishes of stockholders.

44. (1) In making or refusing any order as aforesaid the court shall have regard to the wishes of the owners of stock as a whole and may order meetings to be held to ascertain such wishes and give all necessary directions as to such meetings and may direct any persons not parties to the proceedings to be made parties and to be served.

(2) Any order made shall be deemed to be made on behalf of and shall inure to the benefit of all the owners of stock interested in or affected by such order.

XI. SUBSIDIARY PROVISIONS.

No trust or notice of interest recognized.

45. The registrar shall not enter in the nominal register or the inscribed stock transfer books or any other book or document or be otherwise affected by any notice of any alleged right interest trust power or claim of or by any person in respect of any stock other than a person entered in such books as owner of inscribed stock or lawfully entitled to be so entered in accordance with the provisions of this Ordinance.

Renewal of certificates.

46. If any stock certificate or coupon is worn out or damaged the owner on delivery up of the same and payment of a fee not exceeding five shillings may require the council to cancel it and issue to him a similar certificate or coupon.

Lost certificates.

47. If any stock certificate or coupon is lost or destroyed the owner on proof of the same to the satisfaction of the council and on payment of a fee not exceeding five shillings together with all costs and expenses reasonably incurred by the council and on giving indemnity to the satisfaction of the council may require the council to issue a similar certificate or coupon.

Proceedings to rectify the registers.

48. If the name of any person is without sufficient cause entered in or omitted from the nominal register or the inscribed stock transfer books or if any incorrect or improper entry is made or if default is made or unnecessary delay takes place in making any entry in such nominal register or transfer books any person

aggrieved may apply to the court for an order that the nominal register or transfer books may be rectified. The court may on such application make such order both with regard to the issue and as to costs as to it may seem fit.

49. (1) If it shall at any time appear to the Colonial Secretary from the returns to be rendered as hereinbefore required or otherwise that the council has failed to comply with the requirements of this Ordinance with regard to any payment application or investment in relation to the stock or Redemption Fund it shall be his duty to bring the matter to the notice of the council and to request that the default may be made good within a time to be specified.

Proceedings in case of non-compliance with provisions of Ordinance.

(2) If the council shall fail to comply with such request it shall be competent for the court on the application of the Colonial Secretary or of any ratepayer of the municipality or of any owner of stock to make an order for the due enforcement of the provisions of this Ordinance. The Colonial Secretary shall be awarded the costs of any such application made by him.

50. "The court" in the two last preceding sections means as regards proceedings instituted in the Transvaal the Supreme Court of the Transvaal or the Witwatersrand High Court and the jurisdiction hereby given may be exercised in a summary manner in chambers.

Meaning of court.

51. Instead of raising for any purposes by the creation and issue of stock money which they are authorized to raise under this Ordinance the council may if they see fit raise for those purposes such money by means of bills subject to and in accordance with the following provisions :

Power to issue bills.

- (1) bills issued by the council shall be called "Johannesburg Municipal Bills";
- (2) a Johannesburg municipal bill shall be a bill in the form prescribed by regulations made in pursuance of this Ordinance for the payment of the sum named therein in the manner and at the date therein mentioned so that the date be not less than three or more than twelve months from the date of the bill;
- (3) such bills may be offered for purchase by tender in such manner on such conditions and after public advertisement in such manner as the council determine;
- (4) the bills shall be issued under the authority of a warrant sealed by the council;
- (5) each bill shall be for the amount directed by the council not being less than five hundred pounds;
- (6) each bill shall be under the seal of the council;
- (7) a register of the bills issued and renewed by the council shall be kept by the town treasurer or such other person as may be appointed by the council and such register shall show

the amount of each bill the principal money raised by such bill the statutory borrowing power in respect of which the bill is issued the date of issue the date when the same falls due and the date of payment thereof. Such register shall at all reasonable times be open to inspection without payment of any fee by any creditor of the council;

(8) the council shall not issue bills payable to bearer;

(9) the council shall before issuing any bill under this Ordinance from time to time make regulations with respect to bills subject to and in accordance with this Ordinance and shall furnish to the Colonial Secretary and the Auditor-General a copy of any regulations so made. Such regulations shall provide;

(a) for regulating the preparation form mode of issue mode of payment and cancellation of bills;

(b) for regulating the issue of a new bill in lieu of one defaced lost or destroyed;

(c) for preventing by use of counterfoils or of a special description of paper or otherwise fraud in relation to bills;

(d) for the proper discharge to be given upon the payment of a bill;

(10) the council may enter into such arrangements with any bank for carrying into effect the provisions of this Ordinance with respect to the issue of bills and to the payment of the principal sum named therein and to all matters relating thereto and for the proper remuneration of such bank with reference thereto as they may think proper. Such remuneration shall be paid out of the general funds of the council;

(11) the amount of money received by the council in respect of a bill shall be deemed to be principal money raised by means of such bill and the difference between the amount payable in respect of a bill and the amount received in respect thereof shall be deemed to be interest on the principal money so raised;

(12) the council shall provide from the same source and pay at the appropriate times into the Interest and Redemption Funds created under this Ordinance the same sums for payment of interest and repayment of the principal money so raised as they would have done in respect of the stock in the place of which such bills have been issued;

(13) the aggregate amount payable on bills current at any one time shall not exceed the sum of *five hundred thousand pounds** except by the amount payable on bills issued shortly before any other bills fall due in order to pay off those bills; † *provided that it shall be lawful and competent for the town*

* Words in italics substituted by Ordinance No. 23, 1903, section *one*.

† Words in italics added by Ordinance I (Priv.), 1904, section *one*.

council after giving fourteen days' notice by advertisement in a local newspaper of its intention so to do anything to the contrary in this or any other Ordinance notwithstanding to raise by means of bills such further sum or sums over and above the limit fixed by this or any other Ordinance as the Lieutenant-Governor may sanction.

(14) the council may subject to the provisions of the preceding sub-section renew bills at maturity ;

(15) money raised by the issue of bills shall be employed by the council for the purposes of the several borrowing powers in respect of which the bills are respectively issued ;

(16) for the repayment of the principal money raised by bills the council may raise money by the creation of stock or issue of further bills but save as aforesaid the powers given to the council to raise moneys by the creation of stock shall be suspended to the extent to which moneys have been raised by the issue of bills ;

(17) a Johannesburg municipal bill shall entitle the holder to payment at maturity of the sum expressed in such bill to be payable and shall be charged on all the revenues of the council ;

(18) the town clerk shall within twenty-one days after the thirtieth day of June in any year during which any bills have been issued paid off or are outstanding under this section transmit to the Colonial Secretary and Auditor-General a return in such form as the Colonial Secretary may prescribe and containing all such particulars as he may require in regard to the issue and payment of bills by the council.

52*. (1) It shall be lawful for the council from time to time as circumstances may require to borrow money by way of overdraft from any bank which for the time being may be acting as the bankers of the council. No such overdraft shall exceed in amount the sum of *two hundred thousand pounds.*

(2) Save as aforesaid it shall not be lawful for the council to raise or borrow money otherwise than in the manner and under the conditions prescribed in this Ordinance.

53. A person in good faith applying for any stock on the issue thereof or purchasing taking or holding stock once issued or advancing money in good faith to the council for or on the security of stock issued or to be issued shall not be concerned to inquire or to take notice whether the creation or issue thereof was or was not authorized under the issuing or borrowing powers of the council or otherwise in accordance with any Ordinance relating to such borrowing powers or whether or not the council or any meeting thereof was properly constituted or convened or whether or not the proceedings at any meeting of the council were legal and valid or regular or whether or not the conditions of issue were valid or

Overdrafts

BOW 9
df 1912

Protection
of persons
taking stock
in good faith.

* As amended by Ordinance IV (Priv.), 1904, section *eight*; words in italics substituted by the same section.

have been duly observed or to see to any application of any moneys raised by the stock. A certificate of stock valid as to form once issued purporting to be by or on behalf of the council to a person taking the same in good faith and for good consideration shall be legal and valid for all purposes in the hands of such person and any one taking from or through him notwithstanding any defect informality or illegality in the creation or issue of any of the stock in respect of which such certificate is or purports to be issued or in the making or issue of such certificate or that the amount of stock authorized or resolved on has been or will be exceeded or that such certificate is a duplicate or repetition of any certificate previously issued.

Transfer of stock free of municipal taxes.
Unclaimed interest.

54. The stock shall be issued and be transferable free of any municipal rate or assessment; provided that nothing herein contained shall apply to the payment of fees prescribed by this Ordinance.

55. If at any time any interest is not claimed at the time for payment thereof and remains unclaimed for a period of two years thereafter the amount thereof shall be paid into the Redemption Fund without prejudice to the right of any person at any time thereafter to establish his claim to such interest which shall thereupon be paid to him less any costs and expenses of the council incident to the proof of such claim but without any interest in respect of the period during which any such sum has remained unpaid.

Unclaimed stock.

56. (1) If at the end of the period within which any stock is required to be redeemed according to the provisions of this Ordinance the council shall not be able to redeem any such stock by reason of the owner thereof being unknown or not being forthcoming the council shall invest in any securities in which the Redemption Fund may be invested a sum equal to the nominal value of such stock and thereupon such stock shall be taken to have been redeemed for the purposes of this Ordinance.

(2) Any sums invested as aforesaid shall unless used to satisfy any legal claim in respect of the stock represented thereby be kept invested as aforesaid for a period of ten years after which time it shall be transferred by the council to the Colonial Treasurer to be dealt with according to law.

Evidence.

57. In case of any action or other proceeding civil or criminal relating to stock or coupons or the rights or interests of persons alleging claims thereto or alleged offences in respect of stock or coupons copies of entries in or extracts from the nominal register or the inscribed stock transfer books or any book or document of the council the registrar or any bank referred to in sections *eleven* or *twenty-six* hereof duly certified as correct by the town clerk the town treasurer or registrar in writing under his hand shall be admissible in evidence but the court before whom such action or proceeding is pending may for good cause order the production of the original of any of the books or documents aforesaid.

58. This Ordinance may be cited for all purposes as the Johannesburg Municipality Borrowing Powers Ordinance 1903. Title.

SCHEDULE.

A.—Form of Inscribed Stock Certificate.
Johannesburg Municipality.

No. £.....
This is to certify that..... is the proprietor of.....
pounds of Johannesburg Municipal Stock subject to Ordinance No..... of 1903
relating thereto and to the conditions of issue.
Signed on behalf and by authority of the Johannesburg Town Council at
..... this..... day of..... 19....

B.—Form of Bearer Stock Certificate.
Johannesburg Municipality.

No. £.....
This is to certify that the Bearer of this Certificate is entitled to.....
pounds of Johannesburg Municipal Stock with interest thereon at the rate of
..... per cent. per annum subject to Ordinance No..... of 1903 relating
thereto and to the conditions of issue.
The Coupons attached to this Certificate are payable at.....
When the Coupons are exhausted this Certificate will be exchanged on pre-
sentation at..... for a new Certificate with fresh Coupons attached.
Signed on behalf and by authority of the Johannesburg Town Council at
..... this..... day of..... 19....

C.—Deed of Transfer.
Johannesburg Municipal Stock.

I..... for consideration received do hereby transfer unto
..... of..... the sum of..... pounds Johannesburg
Municipal Stock part of the Stock standing in my name in the Books of the
Johannesburg Municipality subject to the several conditions on which I hold
the same at the execution hereof.
Signed at..... this..... day of..... 19....
Witness :

D.—Cession by Endorsement on Certificate.

I hereby transfer the within Stock unto.....
of..... subject to the several conditions on which I hold the
same at the execution hereof.
Signed at..... this..... day of..... 19..
Witness :

No. 5 of 1903.]

[Promulgated 27th February, 1903.]

* ORDINANCE

TO AMEND THE PEACE PRESERVATION ORDINANCE OF 1902.

Assented to 25th February, 1903.

BE it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

Repeal.

1. Sections *nineteen twenty twenty-one twenty-two twenty-three* and *twenty-four* of the Indemnity and Peace Preservation Ordinance No. 38 of 1902 are hereby repealed.

Permit
required to
enter
Colony.

2. After the date of this Ordinance no person shall enter or reside in this Colony unless he is possessed of a permit issued to him under the provisions of this Ordinance or can give satisfactory evidence that he belongs to one of the following classes :—

(1) Persons resident and actually in this Colony or the Orange River Colony on the 31st May 1902 ;

(2) persons who before the date of this Ordinance have received a permit or other formal authorization to enter this Colony from some person duly authorized to issue the same ;

(3) persons coming within the provisions of article *two* of the Terms of Surrender signed at Pretoria on the 31st day of May 1902 and published in the *Gazette Extraordinary* dated 3rd June 1902 ;

(4) persons employed in His Majesty's Naval or Military Service or in the Civil Service or in any Police Force of this Colony or the Orange River Colony ;

provided that the exemption in this section contained shall not apply to any person who has been expelled from or ordered to leave this Colony or the Orange River Colony.

Persons by
whom
permits may
be issued.
Limitation
on issue of
permits.

3. Permits to enter the Colony shall be in the form prescribed by the Governor and shall be issued by such persons as he may appoint for that purpose.

4. (1) No permit to enter this Colony shall be granted to any person who having been a Burgher of the South African Republic or the Orange Free State has not taken the Oath of Allegiance to His Majesty or made some declaration of equivalent import in form approved by the Governor.

(2) Subject to the above limitation the granting or withholding of permits shall be in the absolute discretion of the Governor.

* This Ordinance was repealed by Act. No. 15, 1907, sec. 1, " provided that no such repeal shall affect or abridge any powers or jurisdiction by the Asiatic Law Amendment Act, 1907, conferred for the purpose of carrying out such Act ; but the said Ordinance shall for all the purposes of such Act be deemed to remain of full force and effect".

5. Any person entering or residing in this Colony may be called upon by any member of any Constabulary or Police Force or other person authorized thereto by the Colonial Secretary to produce a permit issued under this Ordinance or to give satisfactory evidence that he belongs to one of the classes exempted from the necessity of having such a permit under the provisions of section *two*. If the person so called upon fails to produce such a permit or to give such evidence as aforesaid he may be arrested without a warrant and dealt with as hereinafter provided.

Persons called on to produce permits on pain of arrest.

6. Every person so arrested shall with all convenient speed be brought before a Magistrate and if he fails to satisfy the Magistrate that he is duly authorized to enter or reside in this Colony under the provisions of this Ordinance the Magistrate may make an order in writing directing such person to leave this Colony within such time as may be specified in such order; provided that if such person declares upon oath that he has already obtained a permit and gives satisfactory reasons for his inability to produce the same or if he declares upon oath that he can produce satisfactory evidence that he belongs to one of the classes exempted from the necessity of obtaining a permit by the provisions of section *two* hereof he may be released upon entering into a recognizance with or without sureties to produce before any Magistrate named in such recognizance and within the time stated therein such permit or evidence as the case may be. If such person fails to comply with the conditions of his recognizance it shall be forfeited.

Persons arrested to be brought before a Magistrate.

7. Any person who may be ordered to leave this Colony and fails to do so within the time specified in the order and any person whose recognizance has been forfeited under the provisions of the last preceding section may be arrested without warrant and brought before a Magistrate and shall upon conviction be sentenced to imprisonment with or without hard labour for a period of not less than one month and not more than six months and with or without a fine not exceeding five hundred pounds and in default of payment to a further term of imprisonment for a period not exceeding six months.

Penalties.

8. If any person imprisoned under the terms of the last preceding section shall remain in the Colony for a period of more than seven days after the expiration of his term of imprisonment or any subsequent term of imprisonment imposed under this section without obtaining permission in writing from the Colonial Secretary to remain in the Colony the burden of proving which shall be upon him he may be arrested without a warrant and brought before a Magistrate and shall on conviction be sentenced to imprisonment with or without hard labour for a period of not less than six and not more than twelve months and with or without a fine not exceeding five hundred pounds and in default of payment to a further term of imprisonment for a period not exceeding six months.

Further penalties for failure to leave Colony.

Offences
relating to
permits

9. Any person who

(1) obtains or attempts to obtain, or incites any person to obtain or aids or abets any person in obtaining a permit by any fraud misrepresentation false pretence falsehood or other improper means ;

(2) uses or attempts to use or incites any person to use or aids or abets any person in using any permit so obtained ;

(3) enters or attempts to enter this Colony on a permit so obtained or on a permit not issued to him by proper authority ;

shall be liable to a fine not exceeding five hundred pounds or to imprisonment with or without hard labour for a term not exceeding two years or to both such fine and such imprisonment.

Persons who
may be
ordered to
leave Colony.

10. It shall be lawful for the Lieutenant-Governor on its being shown to his satisfaction that there are reasonable grounds for believing that any person within this Colony is dangerous to the peace and good government of the country to issue an order under the hand of the Colonial Secretary to such person to leave the Colony within such time after service of such order as may be stated therein. If on the expiration of the said period such person shall be found within the Colony he shall be proceeded against in manner prescribed in sections *seven* and *eight* of this Ordinance and shall be subject to the penalties therein provided.

Title.

11. This Ordinance may be cited as the Peace Preservation Ordinance 1903 and shall be read as one with the Indemnity and Peace Preservation Ordinance 1902.

No. 8 of 1903.]

[Promulgated 27th February, 1903.]

*† ORDINANCE.

Assented to 25th February, 1903.

WHEREAS it is desirable to make temporary provision for the suspension or reduction of the duty levied on the importation into this Colony of sugar produced in British South Africa ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. It shall be lawful for the Lieutenant-Governor by Proclamation to suspend or reduce the duty on sugar the produce of British South Africa imported into this Colony up to and including the thirty-first day of August one thousand nine hundred and three or such later date as may be notified by the Lieutenant-Governor by Proclamation.

Power to suspend or reduce in British South Africa the duty on sugar.

2. Any such suspension or reduction shall only be granted on production by the importer of such sugar of such evidence as may be required by the Director of Customs with regard to the origin of the sugar and shall be subject to any regulations† made by the Director of Customs governing the importation of such sugar.

Evidence of origin to be produced.

3. This Ordinance may be cited as the Customs Duty (Sugar) Suspension Ordinance 1903.

Title.

* Extended by Ordinance No. 12 of 1903 to other articles of produce, growth, or manufacture of British South Africa except spirits.

† Although this Ordinance has not been repealed, it has practically been superseded by Ordinance No. 4 of 1906.

No. 9 of 1903.]

[Promulgated 27th February, 1903.]

*ORDINANCE

TO CONFER SPECIAL BORROWING POWERS ON THE COUNCIL FOR
THE MUNICIPALITY OF JOHANNESBURG.

Assented to 26th February, 1903.

WHEREAS by the Stadsraad (Johannesburg) Liabilities Liquidation Ordinance No. 27 of 1902 the council for the municipality of Johannesburg is empowered to liquidate out of moneys raised on loan all or any of the liabilities of the late stadsraad ;

And whereas the amount of the said liabilities which it is desirable to liquidate without delay is two hundred thousand pounds or thereabouts ;

And whereas it is expedient that the said council be empowered and authorized to raise money by the means of bills for the purpose of liquidating such liabilities ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

Council
specially
empowered
to borrow
£200,000.

1. The council for the municipality of Johannesburg is hereby empowered and authorized to raise by means of bills in addition to any sum that may be so raised under the Johannesburg Municipality Borrowing Powers Ordinance No. 3 of 1903 a sum not exceeding two hundred thousand pounds which shall be applied for the purpose of liquidating certain of the liabilities of the late stadsraad constituted under Law No. 9 of 1899 on such terms and conditions as the Lieutenant-Governor may approve and such further sums as are mentioned in section *three* hereof.

Application
of section
fifty-one of
Ordinance
No. 3 of 1903.

2. Bills issued under this Ordinance shall be subject to all the provisions of section *fifty-one* of the Johannesburg Municipality Borrowing Powers Ordinance No. 3 of 1903 and any regulations made thereunder except that sub-sections (13) and (14) of the said section shall not apply.

Power to
renew bills.

3. The council may renew the bills issued under this Ordinance at maturity and may raise such further sums by means of bills as may be necessary from time to time for the purpose of paying off any bills issued under this Ordinance ; provided however that all bills issued under this Ordinance shall be paid off within eighteen months from the date hereof and no further bills shall thereafter be issued by virtue of the powers hereby conferred.

Title.

4. This Ordinance may be cited as the Johannesburg Municipality Special Borrowing Powers Ordinance 1903.

* See Ordinance No. 3 of 1903 and footnotes to same.

No. 10 of 1903.] [Promulgated 27th February, 1903.]

*ORDINANCE

TO EXTEND THE JURISDICTION OF THE SUPREME COURT AND TO PROVIDE FOR THE HOLDING OF CIRCUIT COURTS.

Assented to 26th February, 1903.

WHEREAS it is desirable to confer jurisdiction in criminal cases on the Supreme Court of this Colony and on the Witwatersrand High Court ;

And whereas it is desirable to make provision for the holding of Circuit Courts in this Colony and to define the jurisdiction of such courts ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. The Supreme Court shall have jurisdiction over all offences triable within this Colony.

Jurisdiction of Supreme Court and High Court in criminal cases.

The Witwatersrand High Court shall have jurisdiction over all offences committed in the †*magisterial districts of Johannesburg Boksburg, Germiston and Krugersdorp.*

‡ This jurisdiction shall have effect on and after the first day of April one thousand nine hundred and three and shall extend to offences whether committed before or after the first day of September one thousand nine hundred.

2. The Supreme Court consisting of not less than three judges thereof shall be a Court of Appeal in criminal cases and appeals shall be allowed thereto in manner provided in the Criminal Procedure Code 1903.

Supreme Court to be a Court of Appeal in criminal cases.

‡ 3. It shall be lawful for the Lieutenant-Governor by Proclamation in the *Gazette* to divide this Colony into two or more circuit districts and to fix the boundaries of every such district and to alter such boundaries from time to time as occasion may require.

Lieutenant-Governor to divide this Colony into Circuit Court Districts.

4. Courts to be called Circuit Courts shall be held at least twice in every year commencing from such date as may be fixed by the Lieutenant-Governor by Proclamation in the *Gazette* in each of the districts referred to in the last preceding section ; and each of the said Circuit Courts shall be held by a judge of the Supreme Court at such times and at such place or places within each of the said districts as the Lieutenant-Governor shall from time to time direct and appoint.

Circuit Courts to be held twice a year.

* See Ordinance No. 1 of 1905.

† Words in italics substituted by Act No. 14, 1909, section one.

‡ As to places where Circuit Courts are to be held see Proc. (Adm.) 87 of 1909.

Appointment
officers.

5. There shall be attached to each of the said Circuit Courts a registrar who shall keep the records of the said court together with so many officers as may be found necessary. Such officers shall be appointed in the same manner as is provided for the appointment of officers of the Supreme Court.

Jurisdiction
of Circuit
Courts.

6. Each of the said Circuit Courts shall be a court of record and shall subject to the provisions of section *eleven* within the district in which it may be held have and exercise concurrently with the Supreme Court the same jurisdiction powers and authority including the jurisdiction conferred by section *one* of this Ordinance as are vested in the Supreme Court throughout the whole of this Colony.

Removal of
cases to and
from Circuit
Court to any
other com-
petent court.

7. The provisions of section *twenty-nine* of the Administration of Justice Proclamation 1902 as read in conjunction with Ordinance No. 2 of 1902 shall apply *mutatis mutandis* to the removal of cases to and from any Circuit Court to any other competent court.

Transmission
of records to
Supreme
Court.

8. Within one month of the close of each Circuit Court the registrar or other officer thereof shall transmit the records and proceedings in all cases civil and criminal heard and determined before such court to the Registrar of the Supreme Court at Pretoria to be kept by him and filed of record in like manner as the records of the said Supreme Court save and except so far as the judge presiding at such Circuit Court may otherwise order.

Appeals in
civil cases
from Circuit
Court to
Supreme
Court.

9. The provisions of sections *thirty-three thirty-four thirty-five thirty-six thirty-seven* and *thirty-eight* of the Administration of Justice Proclamation 1902 read in conjunction with Ordinance No. 2 of 1902 relating to appeals from the Witwatersrand High Court to the Supreme Court shall *mutatis mutandis* apply to appeals from any Circuit Court in a civil suit or proceeding to the Supreme Court.

Rules to be
framed by
Supreme
Court.

10. *It shall be lawful for the judges of the Supreme Court or the majority of them to frame such rules orders and regulations as to them shall seem meet concerning all matters relating to the practice and procedure in Circuit Courts in civil cases the process of the said courts and the mode of executing the same and the custody of the records of such court.

Witwaters-
rand High
Court and
Circuit Courts
not to have
appellate
jurisdiction.
Process, etc.
of Circuit
Courts may
be executed
anywhere in
the Colony.

11. Nothing in this Ordinance contained shall be deemed to confer on the Witwatersrand High Court or any Circuit Court any appellate jurisdiction or the power of reviewing the proceedings of inferior courts.

† 12. Every process writ order judgment or sentence of the Witwatersrand High Court or any Circuit Court may subject to any rule made by the judges of the Supreme Court be executed

* Rules under this section were published under Govt. Notice No. 678 of 1905 (*Gazette*, 4th August, 1905).

‡ See Ordinance 1 of 1905, section 1.

in any district of the Colony in the same manner and by the same officers as if such process writ order judgment or sentence had been issued made given or passed by the Supreme Court.

‡ 13. The Special Criminal Court at Pretoria and the Special Criminal Court at Johannesburg shall notwithstanding anything in this Ordinance or the Criminal Procedure Code 1903 continue to exercise the jurisdiction vested in them by law immediately preceding the first day of February one thousand nine hundred and three until such courts are dissolved in manner provided in section *fifteen* of Proclamation No. 6 of 1901. § Upon the dissolution of the said courts every criminal case or proceeding pending in such court may be proceeded with in the Supreme Court or Witwatersrand High Court respectively in exactly the same manner as if such case or proceeding had been originally commenced therein.

Jurisdiction
of the
Special
Criminal
Courts.

All records minutes and proceedings whatsoever of and belonging to the said Special Criminal Courts shall upon the dissolution of such courts be delivered over to and deposited for safe custody in the Supreme Court.

14. In every case in which any judgment decree or order of any Circuit Court or of the Special Criminal Courts at Pretoria and Johannesburg ‡ shall require to be proved inspected or in any manner referred to in any other court a copy of such record certified under the signature of the registrar of such court or where the records have been transmitted to the Supreme Court under the signature of the Registrar of the Supreme Court shall be taken and received as *prima facie* evidence of such record; provided that it shall not be necessary in regard to any certified copy to prove the handwriting of the Registrar to any such copy.

Copy of
record duly
certified to
be admitted
as evidence.

15. This Ordinance may be cited as the Superior Courts Title.
Criminal Jurisdiction Ordinance 1903.

‡ The Special Criminal Courts, Pretoria and Johannesburg, were dissolved by Proc. (Admn.) 6 of 1903.

§ Figures in italics substituted by Ordinance No. 4, 1904, section one.

No. 11 of 1903.]

[Promulgated 27th February, 1903.]

ORDINANCE

TO FACILITATE A TRIGONOMETRICAL SURVEY OF THIS COLONY
AND TO PROVIDE FOR THE PRESERVATION OF TRIGONO-
METRICAL BEACONS.

Assented to 26th February, 1903.

WHEREAS it is advisable that a trigonometrical survey of this Colony should be made; and whereas certain trigonometrical beacons will be accurately fixed during the conduct of such survey; and whereas it is important that such beacons should be preserved and maintained;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:

1. "Superintendent" means an officer appointed by the Lieutenant-Governor to conduct and superintend the Trigonometrical Survey of this Colony and shall include any person employed by him or acting under his instructions;

"Beacon" shall signify any trigonometrical station signal beacon or other survey mark.

2. It shall be lawful for the said superintendent to enter upon any land whether belonging to the Crown or to any private person with such animals and vehicles as may be necessary for the purpose of carrying out the survey and to erect any beacon whether on above or below the surface of the ground for the purpose of such survey and to examine and if necessary repair or recover or cause to be repaired and recovered any such beacon and to take from such land or any adjoining land such material as he may deem necessary for the purpose of erecting or repairing any such beacon; provided that if any injury be done thereby to land which has been improved by cultivation or otherwise compensation shall be paid to the owner or occupier of such land the amount of such compensation in the absence of agreement being determined in the manner provided by the Expropriation of Lands and Arbitration Clauses Proclamation 1902.

3. Any person who shall obstruct hinder or prevent the said superintendent from entering on any land for the purposes of the said survey or who shall obstruct hinder or prevent the said superintendent from erecting examining repairing or recovering any beacon or from carrying out the said survey in any other respect shall be liable upon conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Interpreta-
tion of terms.

Superinten-
dent may
enter upon
lands for
purpose of
carrying out
survey.

Penalty for
obstructing
superinten-
dent.

4. Any person who shall injure remove or destroy or cause to be injured removed or destroyed any beacon shall be liable upon conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months. Penalty for injuring beacons.

5. This Ordinance may be cited as the Trigonometrical Title. Survey Ordinance 1903.

No. 12 of 1903.] [Promulgated 3rd April, 1903.]

*ORDINANCE.

Assented to 2nd April, 1903.

WHEREAS it is desirable to extend the provisions of Ordinance No. 8 of 1903 to other articles the produce growth or manufacture of British South Africa ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

Extension of
provisions of
Ordinance
No. 8 of 1903.
Title.

*1. The provisions of Ordinance No. 8 of 1903 shall be and are hereby extended so as to apply to all articles the produce growth or manufacture of British South Africa save and except spirits.

2. This Ordinance may be cited as the Customs Duty Colonial Produce Suspension Ordinance 1903.

* Although this Ordinance has not been repealed, it has practically been superseded by Ordinance No. 4 of 1906.

No. 13 of 1903.]

[Promulgated 9th April, 1903.]

* ORDINANCE

TO APPLY A SUM OF MONEY FOR THE SERVICE OF THE YEAR
ENDING THE 30TH DAY OF JUNE, 1903.

Assented to 7th April, 1903.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. The public revenue of this Colony is hereby charged towards the service of the year ending the 30th day of June 1903 with a sum of four millions four hundred and ninety-four thousand and sixty-nine pounds. Public revenue to be charged with £4,494,069.

2. The money granted by this Ordinance shall be applied to the purposes and services set forth in the schedule annexed hereto. How to be applied.

3. The moneys granted by this Ordinance shall not be issued or applied to any use intent or purpose other than the particular services to which the said amounts have been granted respectively by this Ordinance. Not to be applied otherwise than as granted.

4. The Colonial Treasurer being duly authorized thereto by warrant under the hand of the Lieutenant-Governor shall issue and pay from time to time such sums of money as shall be required for the purposes hereinbefore mentioned not exceeding in the whole the sums respectively in that behalf specified and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant; and the receipts of the persons to whom such sums shall have been so paid shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given. The Treasurer to make payments under warrant of the Lieutenant-Governor.

5. This Ordinance may be cited as the Appropriation Ordinance 1903. Title.

* Compare Ordinances Nos. 48 and 61 of 1903.

SCHEDULE OF ESTIMATED EXPENDITURE FOR THE YEAR 1902-03.

	Estimate for 1902-03.	Vote in Supplemen- tary Supply.
	£	£
1. Charges on account of Public Debt	125,000	—
2. Pensions and Gratuities	1,000	1,000
3. His Excellency the Governor	22,878	3,713
3A. His Excellency the Lieutenant-Governor	—	9,522
4. Secretariat—		
(a) Colonial Secretary	15,110	2,629
(b) Public Works Department	492,023	271,689
(c) Education	196,095	130,410
(d) Public Health	69,251	6,507
(e) Lunatic Asylum	18,581	—
(f) Pretoria Hospital	11,844	1,327
(g) Government Printing Works	48,954	37,301
(h) Surveyor-General	21,908	750
(i) Asiatic Immigration.. .. .	10,000	—
(j) Administration of Permit System	—	6,000
(k) Meteorological Department.. .. .	—	3,000
5. Legal Departments—		
(a) Attorney-General	26,160	800
(b) Superior Courts	43,553	1,810
(c) Commissioner of Patents	4,750	—
(d) Sheriff	2,820	—
(e) Registrar of Deeds	10,990	850
(f) Master of the High Court	7,235	1,575
(g) Liquor Commission	2,000	—
(h) Prisons	120,007	1,568
(i) Pass Office	500	—
(j) Resident Magistrates	97,422	34,275
(k) Police	302,173	24,420
6. Treasury—		
(a) Treasurer	23,310	4,067
(b) Audit Office	13,609	200
(c) Customs	43,570	—
(d) Post Office	150,747	14,325
(e) Telegraphs	149,680	
(f) Civil Supplies	4,000	2,850
7. Mines—		
(a) Commissioner of Mines and Secretarial Branch	7,924	2,130
(b) Engineering Branch	43,005	2,314
(c) Registration of Mining Rights	43,033	9,641
(d) Geological Survey	6,450	—
8. Native Affairs—		
(a) Commissioner for Native Affairs and Secretarial Branch, and other charges for the whole Department	22,597	6,946
(b) Native Commissioners	27,409	10,657
(c) Native Inspection Branch	9,748	—
(d) Pass Branch	17,584	1,526
(e) Swaziland Administration	45,000	—
(f) Sabi Game Reserve	4,000	—
(g) Government Native Labour Depot	—	2,708
9. Transport (Treasury)	20,000	—
10. Exchange and Bank Charges (Treasury)	1,000	—
11. Crown Agents (Treasury)	3,000	—
12. Transvaal Inquiry Bureau, Capetown (Colonial Secretary)	1,500	—
13. Agriculture (Colonial Secretary)	12,300	71,550

SCHEDULE, ETC.—(Contd.)

	Estimate for 1902-03.	Vote in Supplemen- tary Supply.
	£	£
14. Grants-in-aid to local bodies (Colonial Secretary)	66,046	24,900
15. Immigration	2,000	15,000
16. South African Constabulary (Treasury) ..	1,250,000	—
17. Grants to Volunteer Corps (Treasury) ..	75,000	30,000
18. Miscellaneous (Colonial Secretary)	10,000	15,850
19. Expenses of Commissions (Colonial Secretary)	—	3,000
20. Compensation for Surrendered Arms (Ordi- nance No. 13 of 1902)—(Colonial Secretary)	—	71,000
21. Contribution to Municipal Bodies in lieu of rates (Colonial Secretary)	—	16,000
22. Land Department	—	60,200
		£904,010
Less savings on Estimates		112,706
	£3,702,765	£791,304
TOTAL	£4,494,069	

No. 14 of 1903.]

[Promulgated 9th April, 1903.]

ORDINANCE

AMENDING THE LAW AS TO THE EXECUTION OF WILLS AND
OTHER TESTAMENTARY WRITINGS.

Assented to 7th April, 1903.

WHEREAS it is desirable to make provision for the execution of wills and codicils in this Colony;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:

1. No will or other testamentary instrument not being a privileged will made or executed upon or after the first day of January 1904 shall be valid unless it shall be executed in the manner hereinafter mentioned that is to say; it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction and such signature shall be made or acknowledged by the testator in the presence of two or more competent witnesses present at the same time and such witnesses shall attest and subscribe the will or other testamentary instrument in the presence of the person executing the same; and where the instrument shall be written upon more sheets than one the person executing the same and also the witnesses shall sign their names upon every sheet upon which the instrument shall be written; provided always that nothing herein contained shall be deemed to prevent a mark being a sufficient signature.

2. Every will or other testamentary instrument attested at any time heretofore or hereafter by a person whether male or female above the age of fourteen years who is competent to give evidence in any court of law in this Colony shall in respect of the qualification of such person to attest be deemed to have been validly attested and every such person shall be deemed to be qualified to attest the execution of a will or other testamentary instrument.

3. If any person shall attest the execution of any will or other testamentary instrument to whom or to whose wife or husband any beneficial devise legacy estate interest gift or appointment of or affecting any property (other than and except charges and direction for the payment of any debt or debts) shall be thereby given or made such devise or legacy estate interest gift or appointment shall so far only as concerns such person attesting the execution of such will or other testamentary instrument or the wife or husband of such person or any person claiming under such person or wife or husband be null and void.

[1000]

Mode of execution of non-privileged wills on or after the 1st January 1904.

Persons competent to attest execution of a will or other testamentary instrument.

Persons attesting execution of a will to forfeit any interest conferred upon them in such will.

4. If any person shall attest the execution of any will or other testamentary instrument and such person or the wife or husband of such person shall in and by such will or other testamentary instrument be nominated or appointed executor administrator or guardian thereunder the appointment of such person or the wife or husband of such person as such executor administrator or guardian shall be null and void.

Persons attesting execution of a will to forfeit any appointment made as executor guardian etc. in such will.

5. No notarial will whether made before or after the taking effect of this Ordinance shall be deemed or be taken to be invalid null or void by reason that the same was not read over by the notary before whom such will was passed or by any other person to the testator in the presence of the subscribing witnesses to such will.

Notarial wills to be valid though not read over in the presence of witnesses.

6. The following laws and so much of any other law as may be repugnant to or inconsistent with the provisions of this Ordinance are hereby repealed :—

Laws repealed.

Law No. 7 of 1895 so far as it affects the execution of wills ;
Ordinance No. 10 of 1864 if and so far as it may be in force.

7. This Ordinance may be cited for all purposes as the Wills Ordinance 1903.

Title.

No. 15 of 1903.]

[Promulgated 9th April, 1903.]

ORDINANCE.

Assented to 7th April, 1903.

Preamble.

WHEREAS it is expedient to remove certain doubts which have arisen as to the powers of resident magistrates and assistant resident magistrates to admit to bail accused persons undergoing trial under the ordinary jurisdiction of or under any special jurisdiction by any law conferred on such magistrates and to make further provision as to the forfeiture of recognizances entered into by such accused persons ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

Power to magistrate to admit to bail in cases summarily triable under his ordinary or special jurisdiction.

1. Where any accused person is before a court of a resident magistrate charged with an offence summarily triable by such magistrate under the jurisdiction conferred upon him by Proclamation (Transvaal) No. 21 of 1902 or any law amending the same or under any special jurisdiction conferred on such magistrate by any other law if the hearing of the case shall be at any time adjourned and such accused person be remanded it shall be lawful for such magistrate in his discretion to admit such accused person to bail in manner hereinafter provided.

Amount of bail in magistrate's discretion.

2. The amount of the bail to be taken in such case shall be in the discretion of the said magistrate ; provided that no person shall be required to give excessive bail.

Recognizances to be entered into by accused and sureties.

3. When any magistrate shall decide to admit to bail any such accused person as aforesaid a recognizance shall be taken by such magistrate either from such accused person alone or from such accused person and one or more sureties according to the nature and circumstances of the case and the conditions of such recognizance shall be that such accused person shall appear at a time and place to be therein specified and as often as may thereafter be necessary within a period of six months from the date thereof until final judgment in his case shall have been given to answer to the charge of the offence alleged against him or to the charge of any other offence summarily triable by the magistrate as aforesaid which may appear to have been committed by the said accused person.

Applications of provision of Criminal Procedure Code to sureties.

4. The provisions in sections *one hundred and six to one hundred and ten* inclusive and *one hundred and thirteen* of the Criminal Procedure Code 1903 shall *mutatis mutandis* apply to any recognizances entered into by sureties under the last preceding section.

5. When it shall appear to such magistrate as aforesaid that default has been made in the conditions of any recognizance taken by him under the provisions of this Ordinance such magistrate may issue an order declaring such recognizance forfeited and such order shall have the effect of a judgment on the recognizance for the amounts therein named against the accused person and his sureties respectively.

Forfeiture
of recogni-
zances by
order of
magistrate.

6. This Ordinance may be cited as the Magistrates' Courts Title.
(Bail) Ordinance 1903.

No. 17 of 1903.]

[Promulgated 9th April, 1903.]

* ORDINANCE

TO AUTHORIZE THE LICENSING OF POLICE AND VOLUNTEER CORPS CANTEENS FOR THE SALE OF LIQUOR AND TO AMEND IN CERTAIN RESPECTS THE LIQUOR LICENSING ORDINANCE 1902.

Assented to 8th April, 1903.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows ;

Interpreta-
tion of terms.

1. In this Ordinance :

“ commanding officer ” means ;

(a) in the case of the South African Constabulary the Inspector-General ;

(b) in the case of the Town Police the Commissioner of Police ;

(c) in the case of a Volunteer Corps the commanding officer thereof ;

“ canteen ” means and includes any canteen club institute mess or other similar institution established for the use of members of the South African Constabulary or of the Town Police or of any duly established Volunteer Corps with the consent of the commanding officer thereof ;

“ canteen liquor licence ” means a licence to sell intoxicating liquors by retail to be consumed on the premises in which they are sold to any member of any of the forces mentioned in this section for whose use the canteen in respect of which the licence is granted has been established not being a person to whom liquor is prohibited to be sold or supplied by the Liquor Licensing Ordinance 1902 or any other law but to no other person ; provided always that such licence issued in respect of a canteen established for any duly established Volunteer Corps shall authorize the holder thereof only to sell to members of such corps when assembled in or during the time of any camp of training or instruction.

Receiver of
revenue
to issue
licences.

2. (1) It shall be lawful for the receiver of revenue for the district in which any canteen is situated to issue without requiring any payment or the certificate of any licensing court a canteen liquor licence to the commanding officer applying therefor or any officer or non-commissioned officer whom he may designate in writing.

* See Act No. 33 of 1909.

(2) The said licence shall be available at such place and for such period as may be stated in the application.

3. The holder of a canteen liquor licence save as otherwise provided in this Ordinance shall for the purpose of the liquor Licensing Ordinance 1902 be deemed and taken to be the holder of a general retail liquor licence. Penalties.

4. The Liquor Licensing Ordinance 1902 shall be and is hereby amended as follows : Amendments
in Liquor
Licensing
Ordinance
1902.

(1) By substituting the words " resident magistrate " for the words " Licensing Court " and " court " in sub-section (2) (c) of section *seven* of the said Ordinance.

(2) By omitting the words " in case the application shall be granted or allowed " in section *twenty-two* of the said Ordinance.

(3) By omitting in section *twenty-five* of the said Ordinance the words " personally or ".

(4) By the addition at the end of section *twenty-nine* of the said Ordinance of the words " to commence from the day after the last day of the sitting of the court by which the renewal of his licence had been refused or from the termination of his existing licence whichever is later ".

(5) *Repealed by Act No. 33, 1909, section one.*

(6) By the addition at the end of sub-section (1) of section *fifty-three* of the said Ordinance of the words " and notice of such order shall be given by the magistrate to the senior officer of police in his district who shall forthwith communicate the same to the person mentioned in the said order and as far as possible to every holder of a license in the district in which such person resides ".

(7) By adding after sub-section (6) of section *fifty-six* the following new sub-section (7) " Sell or dispose of liquor contrary to the conditions of his licence or in any manner not authorized by the provisions of section *seven* applicable to such licence ".

(8) By inserting after the word " consent " in sub-section (2) of section *fifty-nine* of the said Ordinance the words " of the president and two members ".

5. All the words after " business " shall be omitted from section *thirty-four* sub-section (1) of the said Ordinance and there shall be substituted for the words so omitted the words " shall be deemed to be guilty of a contravention of this Ordinance and shall be liable on conviction to a penalty of twenty-five pounds ".

6. *Repealed by Act No. 33, 1909, section one.*

Amendment
of section
thirty-four
of the
Ordinance.

Definition of
" recognized
town or
village ".

7. This Ordinance may be cited as the Liquor Licensing Further Amendment Ordinance 1903 and shall be read as one with the Liquor Licensing Ordinance 1902 and the Liquor Licensing Amendment Ordinance 1903. Title.

The council shall in addition to the notice required as aforesaid as far as possible send a notice by registered letter to each registered owner or mortgagee of land proposed to be taken.

3. From and after the first publication of the advertisement mentioned in the last preceding section no transfer or mortgage of any right of ownership or other interest in any lands and buildings situate within the said area and included in the said advertisement shall be made to any person other than the council except a transfer in pursuance of a *bona fide* sale concluded prior to the said date or a transfer to the holder of a mortgage bond in satisfaction of such bond.

No transfer or mortgage to be made after notice has been given.

4. Five months after the taking effect of this Ordinance the freehold title in so much of the said area as the council shall have entered upon or taken possession of under section two shall *ipso facto* vest in the council, and may be registered in the name of the council in the Deeds Office of this Colony without payment of any transfer duty ; provided always that it shall be lawful for the Lieutenant-Governor within twelve months from the taking effect of this Ordinance to appropriate to the use of the Crown such portions of land in the said area taken by the council as may be necessary as sites for police and educational purposes without payment of any consideration by way of rent or otherwise to the council.

Vesting of freehold title in council and power of Lieutenant-Governor to appropriate sites.

5. Upon the vesting of the freehold title in the council as aforesaid all rights and interests in any land so vesting registered in the Deeds Office of this Colony or in the Office of the Registrar of Mining Rights at Johannesburg shall except for purposes of compensation under this Ordinance *ipso facto* become extinguished without any transfer thereof to the council and all records of either of the said offices shall on the request in writing of the town clerk be altered and amended accordingly without payment of any transfer duty.

Extinction of all rights and interest in land freehold title of which so vests.

6. At any time after the entering upon and taking possession of any portion of the said area by the council it shall be lawful for the council to close all or any of the streets and thoroughfares therein or to divert or alter the same.

Power of council to close or divert streets.

7. Every owner of or holder of an interest in land or buildings within the said area may at any time after the date of the first publication of notice of intention on the part of the council to make entry as aforesaid up to the date of such entry forward to the town clerk a statement in writing specifying the nature and extent of his ownership or of any interest held by him and under what title the same is held and what sum of money he claims as compensation for dispossession as aforesaid and the council may thereupon treat and agree with such owner or holder as to the amount of compensation to be paid to him and in case of an agreement being so arrived at then the amount so agreed upon shall be payable by the council to such holder or owner on the date of the council making the entry as aforesaid.

Agreement between council and persons interested as to amount of compensation.

Payment of mortgage bonds and preferent charges and surrender of documents to council.

8. Upon payment by the council of the amount (or portion thereof as in section *nine* hereof) of any mortgage bond or other preferent charge registered either in the Office of the Registrar of Mining Rights Johannesburg or in the Deeds Office of this Colony together with (in the case of bonds or charges passed before the date of this Ordinance and not yet due) interest in lieu of notice for the unexpired period of such bond or charge not exceeding six months the documents representing the same shall be surrendered to the council and cancellation thereof shall be obtained by and at the request of the council ; provided that in case there shall be included in the operation of any such mortgage bond or other preferent charge any other property or in case of a bond containing a general clause being in excess of the amount of compensation payable by the council then and in either such case in place of the cancellation of such mortgage bond or other preferent charge as aforesaid the property or properties within the said area and in respect of which compensation shall be payable as aforesaid shall be released therefrom and thereafter such bond or other documents surrendered to the council shall be returned to the legal holder thereof ; provided further that the amount payable in respect of interest in lieu of notice on bonds or other charges not yet due as herein provided shall not be deducted from the amount of compensation payable by the council to the mortgagor.

Where the amount of mortgage bond or preferent charge exceeds amount of compensation then council shall be discharged on paying the amount of compensation.

9. If the amount of any mortgage bond or other preferent charge shall exceed the amount of compensation payable in respect of any land or interest therein hypothecated under such bond or charge then and in every such case the council shall only pay the amount of such compensation in full satisfaction and discharge thereof so far as the council is concerned but without prejudice to any further rights of the holder of such mortgage bond or other preferent charge as against his debtor and in case of there being more than one such mortgage bond or other preferent charge the same shall be satisfied in their legal order of priority and to the extent only to which such compensation shall extend.

In the absence of agreement the amount of compensation to be settled by arbitration.

10. If at the date of the council making entry as aforesaid the amount of compensation payable by the council to any owner or holder as aforesaid shall not have been agreed to as aforesaid then the amount thereof shall be settled by arbitration as hereinafter set forth ; provided however that nothing herein contained shall prevent an agreement between the parties as to the amount to be paid being made between the parties either prior to or after the commencement of arbitration proceedings nor shall anything herein contained prevent the payment by the council at any time if it shall so think fit of the amount of any mortgage bond or other preferent charge upon the property in respect of which any claim shall be made whether the amount of compensation payable in

respect of such property shall have been settled or not; but if any such mortgage bond or other preferent charge shall be so paid in advance by the council it shall be considered as a payment on account of the amount of compensation payable in respect of such property.

11. If it shall become necessary to arrive at the amount of compensation payable as aforesaid by means of arbitration the council shall within fourteen days after entry cause to be served upon the owner or holder of any property or rights in property upon which entry shall have been made as aforesaid or upon the agent or representative of such owner or holder a written notice offering as compensation whatever sum shall be deemed sufficient and calling upon such owner or holder in case he shall refuse to accept such sum as sufficient to refer the amount of compensation to arbitration as hereinafter provided and in case such owner or holder shall not within twenty-one days from the service of such notice accept the sum so offered he shall be deemed to have refused to accept the same and the matter shall forthwith be submitted to arbitration.

Notice to be served by council on owner or holder of property or rights calling upon him to refer the amount of compensation to arbitration.

12. The Supreme Court shall upon application by the council appoint three arbitrators in the manner herein provided to whom shall be referred all questions of disputed compensation and the decision of the majority of whom shall be final. At least fourteen days before making such application as aforesaid the council shall give notice by advertisement in the *Gazette* and in one or more daily newspapers published in Johannesburg of its intentions so to do and shall publish in such notice a list of one or more persons whose names will be submitted by it to the Supreme Court for appointment as arbitrators and any other party interested in the arbitration may appear upon such application and propose any person or persons to the Supreme Court for appointment as arbitrators and the Supreme Court shall appoint one arbitrator from the list submitted by the council and one from among the persons proposed by other parties interested and the persons so appointed shall select a third arbitrator; provided that if upon such application either the council or other parties interested do not propose any fit person as arbitrator or if the arbitrators appointed do not within fourteen days of such appointment select a third arbitrator the Supreme Court shall make the necessary appointments so that the number of arbitrators shall be three and no more; provided further that in any case in which the compensation claimed shall be under one hundred pounds or in which the compensation claimed being in excess of such sum the claimant and the council shall so agree the same shall be settled by a single arbitrator to be appointed by the Supreme Court upon application by the council after fourteen days' notice by advertisement as aforesaid to deal with all such cases.

Appointment of arbitrators.

Where arbitrator dies or becomes incapable or fails to act another may be appointed.

13. If any arbitrator appointed for the purpose of this Ordinance dies or becomes incapable to act or fails to act for fourteen days after his appointment it shall be lawful for the Supreme Court on the application of the council or other parties interested after similar notice to that required in the last preceding section to appoint some other person as arbitrator in place of the person so dying or becoming incapable or failing to act as aforesaid.

Arbitrators to sit to hear all matters referred.

14. The arbitrator or arbitrators appointed as aforesaid shall immediately upon his or their appointment as the case may be sit for the hearing and determination of all matters referred to him or them respectively and shall continue so to sit with such adjournments as he or they may from time to time deem fit until all matters referred shall have been heard and determined and it shall be in the discretion of such arbitrator or arbitrators as the case may be to arrange the order in which such matters referred to him or them respectively shall be so heard and determined.

Award of arbitrators to be given within twenty-one days.

15. An award or decision shall be given by the arbitrator or arbitrators as the case may be in each matter referred and such award shall in each case be given within twenty-one days after the first hearing of evidence in regard thereto or within such extended time (if any) as shall be appointed for that purpose by such arbitrator or arbitrators as the case may be.

Arbitrators may call for production of documents and examine witnesses.

16. The said arbitrator or arbitrators may call for the production of any document in the possession or power of either party except any valuation of property or rights expropriated which either party may have made for his own purpose which he or they may think necessary for determining the matter referred and the arbitrator or arbitrators as the case may be may examine the parties or their witnesses on oath or affirmation and may administer the oaths necessary for that purpose.

Commissions' Powers Ordinance 1902 to apply to proceedings before arbitrators.

17. The provisions of the Commissions' Powers Ordinance 1902 shall *mutatis mutandis* apply to all proceedings before any arbitrator or arbitrators appointed under this Ordinance as if he or they were a commission appointed by the Lieutenant-Governor for the purpose of enquiring into the matters referred to him or them under this Ordinance; the summonses for the attendance of witnesses or the production of documents may be signed by any arbitrator.

Notice to be given by arbitrators to parties interested.

18. The arbitrator or arbitrators as the case may be shall give to each party concerned at least five days' notice of the time when the place where it is intended to hold any sitting for hearing any evidence or arguments in connection with any particular matter referred.

Parties may appear before arbitrators.

19. Upon all proceedings before any arbitrator or arbitrators each party may appear in person or by counsel solicitor or admitted and licensed law agent and may produce such witnesses and documentary evidence as the arbitrator or arbitrators shall allow.

20. The arbitrator or arbitrators as the case may be shall deliver his or their award in writing to the council and the council shall retain the same and shall within two days furnish a copy thereof to the other party concerned if he can be found and shall at all times on demand produce the said award and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Award of arbitrators to be delivered to council.

21. The award of the arbitrator or arbitrators may be made a rule of the Supreme Court or of the Witwatersrand High Court on the application of either party.

Award may be made a rule of court.

22. All the costs of the arbitration and incident thereto shall be borne by the council unless the arbitrator or arbitrators shall award the same or a less sum than shall have been offered by the council as provided in section *eleven* of this Ordinance in which case each party shall bear its own costs and the costs of the arbitrators shall be borne by the council. Any costs recoverable by one party from the other shall be taxed by the Taxing Officer of the Witwatersrand High Court on the scale of charges allowed in that court.

Costs of arbitration.

23. It shall be lawful for the Lieutenant-Governor in case he shall at any time think fit so to do to appoint any person or persons to represent and act for the purpose of this Ordinance on behalf of any owner or holder of any rights in land or buildings within the said area who may be absent from this Colony or may be under any disability to act for himself or who cannot after reasonable enquiry be found and in the event of any such appointment being made such person or persons so appointed shall be authorized and empowered to act for all the purposes of this Ordinance for and on behalf of every such owner or holder on whose behalf he or they shall have been so appointed.

Lieutenant-Governor may appoint persons to represent persons interested.

24. In case of any dispute as to who is entitled to receive any money to be paid under this Ordinance or in case of any money payable to any person who cannot be found or in case of any interdict with respect to such money it shall be lawful for the council to pay such money to the Master of the Supreme Court to hold the same in trust for the person or persons entitled thereto and thereupon all liability of the council in respect of such payment shall come to an end.

In case of dispute as to person entitled money may be paid to Master of the Supreme Court.

25. The amount of compensation payable by the council whether by agreement or arbitration shall not exceed the market value as on the date on which this Ordinance is promulgated of any then existing property or rights taken by the council as aforesaid together with such damages as the owners of such property or rights shall immediately and directly sustain by reason of the carrying out of the purposes for which such property or rights shall be taken; and provided that in calculating such damages any enhanced or improved value which may accrue to such property

Basis on which compensation is to be assessed.

or rights by reason of the carrying out of the said purposes or any loss of prospective or anticipated profits except loss arising from the diminution of the goodwill of any trade or business established before and actually carried on upon such property on the said date and except such loss of profits if any of such trade or business during the time necessarily occupied by removal of the same shall not be taken into account; and provided further that no addition to or improvements of any such property made after the said date (except such addition or improvement was necessary for the maintenance of the property in a proper state of repair) shall be taken into account and in the case of any interest acquired after the said date no separate estimate of the value thereof shall be made so as to increase the amount of compensation to be paid for such property or rights; and provided further that interest shall be payable at the rate of seven per cent. per annum from the date of entry and expropriation by the council as provided in section two of this Ordinance on so much of the compensation payable by the council as shall remain unpaid until such amount shall be paid.

26. *Repealed by Act 34, 1908, section forty-three (1), and new provisions made.*

Power of council to do works on land acquired and to sell or

lease the same. Council to provide accommodation for persons displaced to satisfaction of Colonial Secretary.

27. The council shall provide to the satisfaction of the Colonial Secretary for the accommodation in suitable dwellings situate within or near the said area of such number of the persons displaced as the Colonial Secretary may require; provided that if the Colonial Secretary shall be satisfied that suitable accommodation has been or is about to be forthwith provided for such persons or any class of such persons at some place other than within the said area or the immediate vicinity thereof the requirements of this section shall be deemed to have been complied with to the extent to which accommodation is so provided; and provided further that no such person shall be displaced until accommodation is provided as required by this section.

All land within area taken by council to be withdrawn from operation of Law No. 15 of 1898.

28. All land within the said area entered upon and taken possession of by the council shall be thereupon withdrawn from the operation of Law No. 15 of 1898 or any amendment thereof and shall be and be deemed to be unproclaimed ground anything in the said law or in any other law or elsewhere to the contrary notwithstanding.

Costs of commission to be borne by council.

29. All costs of the commission appointed by the Governor's commission of the sixteenth day of September 1902 to enquire into and report on the Johannesburg Insanitary Area Improvement Scheme shall be borne by the council with the exception of any costs incurred by any person or persons in appearing before the said commission and objecting to the said scheme.

Service of notices.

30. Where* any notice is required by this Ordinance to be given to any person it shall be deemed to be a sufficient service

* As in *Gazette*.

of such notice if such notice is left at or is sent by registered post to the last known address of the person on whom it is to be served.

31. This Ordinance may be cited as the Johannesburg Insanitary Area Expropriation Ordinance 1903. Title.

SCHEDULE.

The area within which the Council is authorized to make entry upon land and buildings in terms of the foregoing Ordinance is the area comprised within a line starting from a point on the southern boundary of the Central South African Railways' (late N.Z.A.S.M.) property where an extension of the line of the eastern side of Malherbe Street meets such boundary and extending eastwards along the boundary of the said Central South African Railways' property to the junction of Locatie and Henri Streets; thence following the boundary of the said South African Railways' property to a point on the said boundary 275·52 feet north of the northern boundary of President Street; thence eastwards and parallel with President Street for a distance of 104·96 feet; thence southwards to the northern boundary of President Street; thence westwards along the northern boundary of President Street to the point of its intersection with the line of the west side of Wolhuter Street; thence southwards to the south-east corner of Stand No. 1,075A (the said Stand being as shown on the general plan of 69 Stands in the Brickfields at Johannesburg prepared by the Surveyor Ewan Curry and dated May 1897); thence along the southern boundaries of Stands Nos. 1,075A, 1,073A, 1,072A and a portion of 1,071A to the point where the southern boundary of a portion of Stand No. 1,071A first meets the southern boundary of the farm Braamfontein and thence continuing in the same line in a westerly direction to the eastern boundary of the Robinson Mynpacht; thence along the boundary of the Robinson Mynpacht to its north-east beacon; thence along the boundary of the Robinson Mynpacht in a south-westerly direction until it meets the northern side of the Fordsburg Main Road and thence along the northern boundary of the Fordsburg Main Road to the south-west corner of Stand No. 668 Fordsburg; thence southwards across the Fordsburg Main Road to the north-east corner of Stand No. 594 Fordsburg; thence along the eastern boundary of Stand No. 594 to its south-east corner and thence following the boundary of the Robinson Mynpacht to a point on the said boundary 108·07 feet to the east of its junction with the east side of Pine Avenue; thence in a north-easterly direction to a point on the south side of Fountain Road being the north-east corner of Stand No. 831; thence in a south-easterly direction along the southern boundary of Fountain Road to the south-east corner of Fountain Road and Park Lane; and thence in a north-easterly direction along the east side of Park Lane to the north-east corner of Park Lane and Main Road being the south-west corner of Stand No. 943; and thence in a south-easterly direction along the northern boundary of Main Road to the north-west corner of Main and Sydenham Roads; and thence in a north-easterly direction along the west side of Sydenham Road to the northern boundary of Avenue Road at the south-east corner of Stand No. 960; and thence in a westerly direction along the northern boundary of Avenue Road to the north-east corner of Avenue Road and Park Lane; and thence in a north-easterly direction along the east side of Park Lane until it meets the northern boundary of Fordsburg; and thence in a north-westerly direction along the northern boundary of Fordsburg Township to the western corner of Stand No. 265; and thence in a north-easterly direction across Roos Street to the south-east corner of Stand No. 260; and thence in a northerly direction along the eastern boundaries of Stands Nos. 260 252 241 229 217 205 193 181 169 157 and crossing Minnaar Vorster Theron and Watermeyr Streets to the north-east corner of Stand No. 157; and thence in westerly direction along the south boundary of Malan Street to the north-west corner of Stand No. 150; and thence in a northerly direction along the eastern boundary of Malherbe Street to the point of commencement provided that this area shall not include Stands Nos. 902 903 904 905 906 907 908 and 909 Burghersdorp the property of the Johannesburg Cold Storage Company and Stands Nos. 881 882 883 884 887 888 889 and 890 Burghersdorp the property of the Imperial Cold Storage Company as will more fully appear from a plan marked E and certified under date 27th day of April 1903 by W. E. Davidson, Colonial Secretary, and filed in the Office of the Town Clerk Johannesburg.

No. 20 of 1903.]

[Promulgated 1st May, 1903.

ORDINANCE

TO PROVIDE FOR THE EXPROPRIATION OF LAND
FOR RAILWAY PURPOSES.

Assented to 30th April, 1903.

WHEREAS it is expedient to consolidate and amend the various Volksraad Resolutions and other laws relating to the construction of railways and the expropriation of land for railway purposes ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

Repeal.

1. (1) The Volksraad Resolutions mentioned in the Schedule to this Ordinance are hereby repealed.

(2) The word " railways " when it occurs in section two of the Expropriation of Lands and Arbitration Clauses Proclamation 1902 shall be omitted.

Definitions.

2. In this Ordinance unless there is something repugnant in the subject or context :

" railway " includes all lines of railway constructed for the use of the public and all lands sidings stations offices dwelling-houses warehouses workshops manufactories fixed plant and machinery and other works of whatsoever description or nature appertaining to or used in connection with a railway ;

" railway purposes " includes the obtaining a supply of water for the use of a railway or any locomotive engine or rolling stock used upon or in connection with a railway.

Notification by Governor of land required for railway purposes.

3. (1) Whenever it appears to the Governor that land in any locality is likely to be needed for railway purposes a notification to that effect shall be published in the *Gazette* and the magistrate shall cause public notice of the substance of such notification to be given at convenient places in the locality.

(2) Thereupon it shall be lawful for any officer either generally or specially authorized by the Governor in this behalf and for his servants and workmen :

to enter upon and survey and take levels of any land in such locality ;

to dig or bore into the sub-soil ;

to do all other acts necessary to ascertain whether the land is adapted for such purposes ;

to set out the boundaries of the land proposed to be taken and the intended line of railway if any proposed to be made thereon ;

to mark such levels boundaries and line by placing marks and cutting trenches ;
and when otherwise the survey cannot be completed and the levels taken and the boundaries and line marked to cut down and clear away any part of any standing crop fence or brush-wood ;

provided that no person shall enter into any building or upon any enclosed yard or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least twenty-four hours' notice in writing of his intention to do so.

(3) For the purpose of carrying out the operations authorized by this section it shall be lawful for the said officer his servants and workmen to erect tents or other temporary dwellings or stores and to graze upon such land all such animals as they may require and to take from any well spring or stream upon such land water for their necessary use.

4. It shall be lawful for the Governor to enter upon take possession of and use any land required for the purpose of making any railway authorized by him or for any accommodation or other works connected therewith or for the purpose of obtaining a water supply for railway purposes and to that end to Powers of
the Governor.

(a)* make or construct in upon across under or over any lands or any streets roads railways tramways or any rivers canals streams or other waters or any drain-pipes water-pipes gas-pipes or telegraph lines such temporary or permanent arches tunnels culverts embankments aqueducts bridges roads lines of railway ways passages conduits drains piers cuttings and fences as he may think proper ;

(b)* alter the course of any rivers streams or water-courses for the purpose of constructing and maintaining tunnels bridges passages or other works over and under them and divert or alter as well temporarily as permanently the course of any rivers streams or water-courses or any roads streets or ways or raise or sink the level thereof in order the more conveniently to carry them over or under or by the side of the railway as he may think proper ;

(c)* make alter or repair drains or conduits into through or under any lands for the purpose of conveying water from or to the railway ;

(d) erect and construct such houses warehouses offices and other buildings and such yards stations engines machinery apparatus and other works and conveniences as he may think proper ;

* See Act No. 27, 1908, section *eighty-one.*

(e) alter repair or discontinue such buildings works and conveniences as aforesaid or any of them and substitute others in their stead ;

(f) take carry away and use any earth stone timber gravel or sand or any other materials or things out of any land contiguous to or adjoining such railway and other works and which may be proper or necessary for making maintaining altering repairing or using such railway or works ;

*(g) sink wells construct dams and all other works necessary for providing a water supply ;

(h) do all other acts necessary for making maintaining altering or repairing and using the railway.

Governor may instead of acquiring the ownership acquire a servitude.

5. In any case where the Governor has power to take and appropriate land for railway purposes and it appears to him that a servitude in or over such land will be sufficient for those purposes he may instead of taking and appropriating such land purchase and take and the owner thereof shall sell and transfer accordingly a servitude in over and the right of using the same for such purposes.

Powers in case of accident.

6. It shall be lawful for the Governor or any person authorized by him in case of any accident from whatever cause happening or being apprehended to any cutting or embankment† or other works connected with any railway to enter upon any land adjoining such railway for the purpose of repairing any damage caused by such accident or of guarding against any apprehended accident and to do such work as may be necessary for the purpose.

Governor may take land before compensation is ascertained.

7. Whenever the Governor requires any land or any right interest or servitude in or over any land or any materials for the purposes of this Ordinance it shall not be necessary before taking possession of such land right interest servitude or materials to settle the compensation to be paid for or in respect thereof but it shall be lawful for the Governor or any person authorized by him either generally or specially to enter upon take possession of and use any such land right interest servitude or materials which may be required whenever he may think fit leaving all questions of compensation to be paid for or in respect thereof to be afterwards settled by voluntary agreement or in default thereof to be ascertained by arbitration in manner provided by the Expropriation of Lands and Arbitration Clauses Proclamation 1902.

Provided that where there are improvements upon any such land in respect of which compensation may be claimed under section *nine* such improvements shall not be interfered with until twenty-one days' notice shall have been given to the person entitled to such compensation if he can be found in order that he may be afforded an opportunity of having such improvements valued. If such person cannot be found the compensation for such improvements may be ascertained in manner provided by section *twenty-eight* of the aforesaid Proclamation.

* See Act No. 27, 1908, section *eighty-one*.

† As in *Gazette*.

*8. The Governor may take or cause to be taken water for railway purposes

Governor may take water for railway purposes.

- (a) from any river stream pan or other natural source ;
- (b) from any dam furrow or artificial works used for the storage or distribution of water upon payment of compensation to the owner of such dam or furrow or artificial works ;

provided that a sufficient supply be left to the owners or occupiers of land entitled to the use of such water for household and agricultural purposes and for watering their stock.

9. Compensation to be ascertained in manner prescribed by the Expropriation of Lands and Arbitration Clauses Proclamation 1902 shall be paid for or in respect of any land or any right interest or servitude in or over any land or any material taken therefrom or for any right injuriously affected by the exercise of the powers conferred under the provisions of this Ordinance provided that no compensation shall be payable in respect of

Compensation when payable and how ascertained.

- (a) unimproved land (except stands or erven) occupied by the railway line of a uniform width of one hundred feet or such greater width as may be judged necessary for raising embankments or making cuttings but in no case shall the amount of unimproved land so taken without compensation exceed one-twentieth of the extent of land held under one title ;
- (b) indirect damage or loss of profits ;
- (c) anything done with the object of obtaining compensation therefor ;

and provided further that in fixing the amount of compensation to be paid the benefit which the person claiming compensation may derive in consequence of the construction of the railway may be taken into consideration.

10. The duties assigned to the secretary to the Department of Public Works under the Expropriation of Lands and Arbitration Clauses Proclamation 1902 shall so far as the expropriation of land or other rights under this Ordinance is concerned be performed by such officer as the Governor may appoint for that purpose.†

By whom expropriation may be carried out.

11. In either of the following cases namely :

- (a) when there is danger that a tree standing near a railway may fall on the railway so as to obstruct traffic ;
- (b) when a tree obstructs the view of any fixed signal ;

Cutting down trees.

the Commissioner of Railways may cause the tree to be cut down or dealt with in such manner as will in his opinion avert the danger or remove the obstruction as the case may be.

12. No line of railway shall be so constructed as to obstruct or interfere with or injuriously affect the working of or the access or adit to any mine then open or for opening which preparations are at the time of such placing being lawfully and openly made.

Line not to be constructed so as to injuriously affect mines.

* See Act No. 27, 1908, section *eighty-one*.

† The General Manager of Railways has been appointed such officer.

No person to be compelled to part with portion of property where willing to part with whole.

Penalty.

13. No person shall at any time be compelled to sell or transfer or give possession of a part only of any house or other building or manufactory if such person is able and willing to sell and transfer and give possession of the whole unless in the opinion of the court or arbitrators assessing the compensation such portion can be severed from the whole without material detriment thereto.

14. Whoever wilfully obstructs any person in doing any of the acts authorized by section *three* or section *four* or wilfully fills up destroys damages or displaces any excavation trench beacon or mark made under section *three* shall on conviction before a magistrate be liable to imprisonment for any period not exceeding one month or to a fine not exceeding twenty-five pounds or to both such fine and imprisonment.

Land expropriated to be vested in the Governor.

15. (1) All land or other rights which have hitherto been or may hereafter be expropriated for railways shall vest in the Governor.

(2) No formal transfer to the Governor of any such lands shall be necessary but the same shall vest in the Governor as fully absolutely and effectually as if transfer and conveyance thereof had been duly passed according to the law and custom of this Colony.

Title.

16. This Ordinance may be cited as the Railway Expropriation of Lands Ordinance 1903.

SCHEDULE.

Volksraad Resolution of the 13th May, 1889, Article 32;*
Volksraad Resolution of the 8th August, 1890, Article 1220;
Volksraad Resolutions of the 27th and 28th July, 1892, Articles 960, 963, 965, 967, and 971.

* 32 is an error; it should be 82.

No. 21 of 1903.]

[Promulgated 1st May, 1903.]

ORDINANCE

TO ENABLE THE TOWN COUNCIL OF JOHANNESBURG TO OBTAIN AND APPROVE PLANS OF CERTAIN TOWNSHIPS WITHIN THE ADDED AREA OF THE MUNICIPALITY.

Assented to 30th April, 1903.

WHEREAS the boundaries of the Municipality of Johannesburg as defined by Proclamation No. 16 of 1901 have under the powers given by the said Proclamation been altered and extended and the existing boundaries are defined in the schedule to a Proclamation entitled Proclamation No. 13 (Administration) of 1902 dated the twenty-second day of November 1902 and published in the *Gazette*;

And whereas it is expedient to require the owners of townships existing on the said twenty-second day of November 1902 within the areas added to the municipality as aforesaid to deposit with the Town Council of Johannesburg plans of the said townships and to provide for the approval by the said Town Council of such plans;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:

1. Every owner of a now existing township within the areas added to the Municipality by Proclamation No. 13 (Administration) of 1902 which was in existence on the twenty-second day of November 1902 and which contains one or more streets or thoroughfares shall within ninety days after the date of this Ordinance file at the office of the town engineer a plan certified by a Government surveyor showing all the stands or lots and all the roads streets or thoroughfares and all squares or other open spaces within such township existing on the twenty-second day of November 1902 and set apart by such owner for the use of the public or represented by such owner either on a plan or otherwise as intended for public use; and every such first-mentioned plan if and when approved by the Council or settled by arbitration as hereinafter provided shall for all municipal purposes be deemed to be the authorized plan of such township and all the streets roads thoroughfares squares and open spaces shown thereon and set apart or represented as aforesaid shall be vested in and be under the control and management of the Council.

Plans of townships in added area and existing on 22nd November 1902 to be deposited with the Council.

Application
of certain
sections of
Johannesburg
Municipality
Amendment
Proclamation
1902.

2. The provisions of sections *sixteen* to *twenty-one* inclusive of the Johannesburg Municipality Amendment Proclamation 1902 shall be incorporated with this Ordinance provided that the following words and expressions used in the said sections shall be read and construed in the following manner:

the expression "on the date above referred to" in section *sixteen* of the said Proclamation shall be read as "on the twenty-second day of November 1902";

the words "previous section" in the said section *sixteen* shall be read as "section *one* of this Ordinance";

the word "Proclamation" where it last occurs in the section *nineteen* of the said Johannesburg Municipality Amendment Proclamation shall be read as "Ordinance".

Definition
of terms.

3. For the purposes of this Ordinance the term "township" shall mean any piece of land divided into stands or lots for the purposes of sale or lease and the term "owner" shall mean the holder or holders whether in freehold or otherwise of every such piece of land who shall have so divided the same and his or their successors in title other than the holders of such stands or lots.

Title.

4. This Ordinance may be cited as the Johannesburg Municipality Plan of Townships Ordinance 1903.

No. 22 of 1903.]

[Promulgated 1st May, 1903.]

ORDINANCE.

Assented to 30th April, 1903.

WHEREAS in the fourth clause of the Conditions of Surrender signed at Pretoria on the thirty-first day of May 1902 it is provided that no proceeding civil or criminal for any acts in connection with the prosecution of the war will be taken against any of the burghers surrendering under the said conditions or against prisoners of war at the date of the signing of the said conditions outside South Africa returning to the Transvaal after duly declaring their acceptance of the position of subjects of His Majesty King Edward the VII.;

And whereas it is desirable that the provisions of the said clause should be made of legal force and effect;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. The fourth clause in the Conditions of Surrender which is as follows :

“ no proceedings civil or criminal will be taken against any of the burghers so surrendering or so returning for any acts in connection with the prosecution of the war. The benefit of this clause will not extend to certain acts contrary to the usage of war which have been notified by the Commander-in-Chief to the Boer Generals and which shall be tried by court-martial immediately after the close of hostilities ”

Fourth clause
of Conditions
of Surrender
to be of legal
force and
effect.

shall be of full force as law within this Colony from the date of the signing of the Conditions of Surrender to wit the thirty-first day of May 1902 ; and it shall be a defence to any civil or criminal proceedings taken against any person being one of the persons referred to in the said clause that the act in respect of which such proceedings are taken was an act in connection with the prosecution of the late war between His Majesty and the late Governments of the South African Republic and Orange Free State.

2. This Ordinance may be cited for all purposes as the Title.
Indemnity (Burgher) Ordinance 1903.

No. 23 of 1903.]

[Promulgated 1st May, 1903.]

ORDINANCE

TO AMEND THE JOHANNESBURG MUNICIPALITY BORROWING
POWERS ORDINANCE 1903.

Assented to 30th April, 1903.

Preamble.

WHEREAS it is desirable to extend the limit of the aggregate amount which may under the provisions of the Johannesburg Municipality Borrowing Powers Ordinance 1903 be raised by the Town Council of Johannesburg by the issue of bills;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:

Amendment
of section
fifty-one
sub-section
(13) of Ordinance No. 3
of 1903.

1. The Johannesburg Municipality Borrowing Powers Ordinance 1903 shall be and is hereby amended by substituting for the words "one hundred thousand" in section *fifty-one* sub-section (13) thereof the words "five hundred thousand".

Title.

2. This Ordinance may be cited as the Johannesburg Municipality Borrowing Powers Amendment Ordinance 1903 and shall be read as one with the Johannesburg Municipality Borrowing Powers Ordinance 1903.

No. 25 of 1903.]

[Promulgated 1st May, 1903.]

ORDINANCE

TO FACILITATE MILITARY MANŒUVRES.

Assented to 30th April, 1903.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

* 1. (1) The Lieutenant-Governor in Council may authorize the execution of military manœuvres within specified limits and during a specified period not exceeding three months ; provided that the same limits or any part thereof shall not be specified more than once in any period of two years.

Lieutenant-Governor in Council may authorize manœuvres.

(2) Notice of the intention to make the order shall not less than three months before the order is to come into force be published three times in the *Gazette* and in at least one newspaper circulating generally within the district.

2. Where the execution of military manœuvres are authorized as in section *one* provided such persons as are under the authority of His Majesty engaged in the manœuvres (in this Ordinance referred to as the authorized forces) may under the direction of the Lieutenant-Governor within the specified limits and during the specified period :

Execution of manœuvres to be subject to certain limitations and liabilities.

(1) pass over and encamp construct military works not of a permanent character and execute military manœuvres on any land whether under cultivation or not ;

(2) supply themselves with water from any sources of water and for that purpose dam up any running water ; provided always that such damming up of water does not interfere with the carrying on of any trade or industry and that nothing in this Ordinance shall authorize the taking of water from any source of supply belonging to a private owner or public authority except subject to the supply shown to be required by those entitled to use such water supply ;

provided as follows :

(1) nothing in this Ordinance shall authorize entry on or interference with any dwelling-house place of worship school factory workshop store or premises used for the carrying on of any trade business or manufacture farm-yard garden orchard pleasure ground or nursery ground

* See Proclamation No. 15 Admn. of 1903 (*Gazette*, 15th June, 1903, p. 1101) ; Govt. Notices Nos. 401, 1905 (*Gazette*, 12th May, 1905) ; 458, 1908 (*Gazette*, 16th May, 1908) ; 370, 1909 (*Gazette*, 8th April, 1909) ; 501, 1910 (*Gazette*, 24th March, 1910).

burial ground attached to any place of worship or school or any tent or other enclosure attached to any dwelling-house ;

- (2) the officer in command of the authorized forces shall take care that there is no interference with any picturesque or valuable timber or other natural features of exceptional interest or beauty and shall be empowered to prevent trespass or damage to property by persons not belonging to the forces and shall cause all lands used under the powers conferred by this Ordinance to be restored as soon and as far as practicable to their previous condition or pay compensation ;
- (3) subject to the provisions of this Ordinance with respect to :
- (a) the closing of roads and footpaths ; and
 - (b) obstruction of or interference with military manœuvres ; and
 - (c) entering or remaining in a camp ;

nothing in this Ordinance shall prejudicially affect any public right or any right of common.

3. (1) The resident magistrate may if he shall think fit on the application of a commissioned officer in command of the authorized forces or of part thereof by order suspend for a time not exceeding forty-eight hours any right of way over any roads or footpaths within the specified limits within his jurisdiction ; provided that any such order shall only be made with regard to any main road for a time not exceeding twelve hours and after seven days' notice of such intended application published in at least one newspaper circulating generally in the district and subject to such terms and conditions as may be required by the said magistrate for the protection of individuals or of the public or of public bodies.

(2) The officer in command of the authorized forces shall cause such public notice of the order as the magistrate may require to be given not less than twelve hours before the order comes into force and shall give all reasonable facilities for traffic whilst the order is in force.

4. (1) Where the execution of military manœuvres has been authorized as in this Ordinance provided full compensation shall be made for any damage to person or property arising from putting in force any of the provisions of this Ordinance and occasioned by the acts or defaults of the authorized forces including therein all expenses reasonably incurred in protecting persons property rights and privileges.

(2) Compensation shall be determined by two persons one being a landowner to be appointed by the Lieutenant-Governor and the other by the officer commanding the district who shall determine as speedily as possible the amount of compensation to be paid for any damage sanctioned under this Ordinance and

Resident Magistrate may close roads on application of Commanding Officer for forty-eight hours.

Compensation for damage to person or property.

such amount if agreed to by the claimant shall as soon as practicable be paid by such officer. If the amount of compensation determined as aforesaid is not agreed to by the claimant the amount of compensation payable shall be referred to a third person to be appointed by the Lieutenant-Governor whose decision shall be final and as soon as practicable after such decision is given such amount shall be paid to the claimant by such officer as aforesaid.

(3) The Lieutenant-Governor may after consultation with the General Officer Commanding the Forces make regulations with respect to the procedure for making and determining claims for compensation for limiting the time within which claims must be made and for regulating the mode in which compensation is to be paid.

5. (1) If within the limits and during the period specified in an order authorizing military manœuvres under this Ordinance any person :

(a) wilfully and unlawfully obstructs or interferes with the execution of the manœuvres ; or

(b) without due authority enters or remains in any camp ; he shall be liable on summary conviction to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding seven days and he and any animal or vehicle under his charge may be removed by any constable or by order of any commissioned officer of the authorized forces.

(2) If within the limits and during the period aforesaid any person :

(a) without due authority moves any flag or other distinguishing mark for the purposes of the manœuvres ; or

(b) maliciously cuts or damages any telegraph or telephone wire or instrument laid down by or for the use of the authorized forces ;

he shall be liable on summary conviction to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding one month.

6. This Ordinance may be cited for all purposes as the Military Manœuvres Ordinance 1903. Title.

No. 27 of 1903.]

[Promulgated 1st May, 1903.]

in as far as ORDINANCE *Despatch*
relates to the act of 1903
TO AMEND PROCLAMATION TRANSVAAL NO. 37 OF 1901.

Assented to 30th April, 1903.

WHEREAS it is desirable to amend in certain respects Proclamation Transvaal No. 37 of 1901 ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

Amendments
in Procla-
mation
Transvaal
No. 37 of 1901.

1. Proclamation Transvaal No. 37 of 1901 shall be and is hereby amended in the following respects :

(1) by the omission of the words " on public diggings " in the preamble to the said Proclamation and in sub-section (3) of section *one* thereof and substituting the words " in this Colony " in lieu thereof in the preamble and omitting the words " on such diggings " in the said sub-section ;*

(2) by omitting the word " knowingly " in the first line of section *two* of the said Proclamation ;

(3) by omitting the words " in or about any mine " in sub-section (*a*) of section *five* of the said Proclamation ;

(4) by inserting the following new sub-section (*d*) in section *five* of the said Proclamation to wit :

(*d*) *For text see Tr. Pr. 37, 1901, section 5 (d).*

(5) by adding the words " actually earned by him " at the end of section *seven* after the word " native ".

Definition of
native.

2. The definition of the term " native " in the *fourth* section of the said Proclamation is hereby amended and from and after the date of this Ordinance the term " native " when it occurs in the said Proclamation or in the regulations made thereunder shall mean a male person over fourteen years of age both of whose parents are members of some aboriginal race or tribe of Africa.

Title.

3. This Ordinance may be cited as the Native Pass Proclamation Amendment Ordinance 1903 and shall be read as one with the Native Passes Proclamation 1901.

* The words " in the preamble . . . sub-section " do not appear in the first promulgation (*Gazette*, 1st May, 1903), but appear in subsequent publications (8th and 15th May, 1903).

No. 28 of 1903.]

[Promulgated 8th May, 1903.]

ORDINANCE

TO AMEND THE JURY ORDINANCE 1902.

Assented to 5th May, 1903.

WHEREAS it is desirable to amend the Jury Ordinance 1902 ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. Notwithstanding anything to the contrary in the Jury Ordinance 1902 the Sheriff or his lawful deputy shall in drawing jurors to serve on juries in the trials of criminal cases in the Supreme Court and Witwatersrand High Court draw such number being a multiple of twenty-seven as may be directed by the Attorney-General. Each of the jurors so drawn shall be summoned in the prescribed manner to attend upon such days as may be stated in the summons requiring him to attend as a juror ; provided that not less than twenty-seven jurors shall be summoned to attend upon any day on which the criminal sessions of either such courts is held. Any juror actually serving on a jury in any case must continue to serve until the jury have given their verdict or are discharged by the court notwithstanding that the period for which such juror has been summoned to attend shall have expired.

Additional powers of Sheriff as to the number of jurors summoned under the Jury Ordinance 1902.

2. It shall be lawful for the Sheriff or his lawful deputy to take the necessary steps to summon such number of additional jurors as the Attorney-General may direct to serve on juries at the session of the Witwatersrand High Court for the trial of criminal cases now being held at Johannesburg and the jurors at present serving may be discharged from further service at the present session from such date as may be fixed by the presiding judge.

Power to Sheriff to summon additional jurors for present Witwatersrand Criminal Session and validation of steps taken for that purpose.

Any steps taken to summon the additional jurors referred to in this section before the passing of this Ordinance shall be as valid and effectual as if taken after the passing thereof.

3. This Ordinance may be cited as the Jury Ordinance 1902 Amendment Ordinance 1903.

Title.

No. 29 of 1903.]

[Promulgated 8th May, 1903.]

ORDINANCE

LEGALIZING CERTAIN MARRIAGES BETWEEN COLOURED
PERSONS.

Assented to 5th May, 1903.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

Marriages between coloured persons solemnized prior to operation of Law No. 3 of 1897 to be valid.

1. All marriages between coloured persons solemnized by a minister of religion authorized to solemnize marriages before the coming into operation of Law No. 3 of 1897 shall be as valid to all intents and purposes as if such marriages had been duly solemnized after the coming into operation of the said law in the manner prescribed therein ; provided that neither of the parties shall after such marriage have lawfully intermarried with any other person ; and provided further that the said marriages be registered with the marriage officers appointed in the several districts under Article 2 of Law No. 3 of 1897.

Duties of registering officer.

2. Before registering any such marriage as in the last preceding section mentioned the marriage officer shall satisfy himself by calling for the production of a marriage certificate or otherwise that such marriage was solemnized by a minister of religion authorized to solemnize marriages and shall charge for such registration the sum of two shillings and sixpence to be denoted by stamps to be affixed to a certificate of registration which shall after cancellation of the stamps by the said marriage officer be delivered to the parties to the said marriage.

Title.

3. This Ordinance may be cited as the Legalization of Marriages of Coloured Persons Ordinance 1903.

No. 31 of 1903.]

[Promulgated 8th May, 1903.]

* ORDINANCE

FOR THE RAISING OF A SUM OF THIRTY-FIVE MILLIONS BY
THE COLONY OF THE TRANSVAAL.

Assented to 5th May, 1903.

WHEREAS it is desirable to raise a loan of thirty-five millions for the purpose set forth in the schedule to this Ordinance;

And whereas it is contemplated that this loan shall be guaranteed by the British Treasury under an Act of the Parliament of the United Kingdom of Great Britain and Ireland;

And whereas provision will be made by an Order-in-Council whereby the net revenues of the Central South African Railways (in this Ordinance referred to as the railway revenue) shall be allocated to the payment of the interest on the loan and the sinking fund payments in respect of it and for the purposes of this Ordinance shall be deemed and taken to be portion of the general revenues and assets of the Government of this Colony;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:

1. The Lieutenant-Governor may borrow the sum of thirty-five million pounds by means of the issue of inscribed stock under this Ordinance.

Lieutenant-Governor may borrow thirty-five millions.

2. The principal moneys and interest secured by the inscribed stock issued under the provisions of this Ordinance and the sinking fund payments in respect thereof are hereby charged upon and made payable out of the general revenues and assets of the Government of the Colony with priority over any charges thereon not existing at the date of the passing of this Ordinance or of the passing of the South African Loan and War Contribution Act 1903 of the Imperial Parliament whichever date is earliest.

Loan to be a charge upon general revenues and assets.

3. Any sums issued out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland on account of the guarantee of the loan by the British Treasury shall be repaid to the Treasury out of the general revenues and assets of the Government of the Colony with interest thereon at the rate of four per cent. per annum and shall be charged on those revenues and assets immediately after the charge for and in respect of the loan created under the preceding section of this Ordinance.

Repayment to Treasury of payments on guarantee.

4. The stock for the purposes of the loan shall be issued in England by the Bank of England under the provisions of the Act of the Imperial Parliament entitled the Colonial Stock Act

Borrowing upon inscribed stock.

* See Act No. 10 of 1910; see also Act No. 8 of 1907.

of 1877 at such times and on such terms and at such rate of interest not exceeding three per cent. per annum as the Secretary of State for the Colonies with the consent of the Treasury may determine.

When the principal is to be repaid.

5. All the inscribed stock which may be created under the provisions of this Ordinance shall be redeemable at par on a date to be named in that behalf by the Bank of England when issuing the stock such date not being later than fifty years from the first day of April 1904. From and after that date all interest on the principal money secured by the stock shall cease and determine whether payment of the principal shall have been demanded or not.

Provision of interest and sinking fund.

6. The Lieutenant-Governor shall in each half-year remit :
 (1) a sum equal to one half-year's interest on the whole of the outstanding stock ; and
 (2) an additional sum for the formation of a sinking fund equal to ten shillings per cent. on that amount or if the Treasury certify that a greater sum is necessary for making the sinking fund sufficient for the repayment of the loan at the expiration of fifty years such greater sum.

The amount for the payment of interest shall be remitted to the Bank of England in time to enable them to pay the current half-year's interest on the day when it falls due.

The amount for the formation of the sinking fund shall be remitted to the Crown Agents for the Colonies.

The amounts to be remitted under this section shall so far as not provided for out of railway revenues or otherwise be appropriated and paid out of the general revenues and assets of the Government of the Colony.

Trustees of the sinking fund.

7. The trustees for the investment and management of the sinking fund shall be the Permanent Secretary of the Treasury and two of the Crown Agents for the Colonies to be nominated by the Secretary of State for the Colonies.

Creation of sinking fund.

8. The Crown Agents shall pay over the money so remitted to them for the formation of a sinking fund to the trustees of that fund who shall apply it to the purchase of the stock in the market whenever it can be purchased at a price less than par and failing such purchase shall invest such money in the purchase of such debentures stock or other security as may from time to time be approved by the Treasury and the Secretary of State for the Colonies and may from time to time with the like approval change any such investment and shall hold such fund in trust for the repayment of the principal moneys for the time being secured by the inscribed stock and the income arising from any stock purchased or any investments made under this section shall be applied or invested in the like manner and accumulated.

Expenses to be paid out of sinking fund.

9. All expenses of or incidental to the management of the sinking fund shall be paid out of the sinking fund.

10. Any money raised under this Ordinance shall subject to the provision made thereby for the expenses of the issue of the loan be applied for the purposes set forth in the schedule to this Ordinance either in the Transvaal or Orange River Colony. Application of money raised by loan.

The Lieutenant-Governor may from time to time with the approval of the Secretary of State for the Colonies apply any savings which may be made under any head or heads in the schedule to any other head.

11. If arrangements should be made for the conversion of any existing debt or for the extinction of any liability included in the schedule by the issue of stock instead of cash the Bank of England shall have power to issue stock for the purpose to such persons and in such manner as the Lieutenant-Governor directs. Conversion of existing debt.

12. (1) The Bank of England shall have the management of the loan and may issue stock certificates to bearer. Management of loan.

(2) The expenses of and incidental to the issue of the loan shall be paid out of the proceeds of the loan and the expenses of the management of the loan shall be paid out of the revenues of the Colony.

13. This Ordinance may be cited as the Transvaal Guaranteed Loan Ordinance 1903. Title.

SCHEDULE.

I. Existing Liabilities of the Transvaal and Orange River Colony :		£	£
A. Deficit of the Transvaal 1901-02	1,500,000		
B. Former debt of the South African Republic	2,500,000		
C. Compensation to Loyalists in Cape Colony and Natal.. .. .	2,000,000		
			6,000,000
II. Acquisition of Existing Railways in the Transvaal and Orange River Colony			14,000,000
III. Repatriation and Compensation in the Transvaal and Orange River Colony :			
A. Advances by way of Loan	3,000,000		
B. Other charges	2,000,000		
			5,000,000
IV. New development in the Transvaal and Orange River Colony :			
A. New Railways	5,000,000		
B. Land Settlement	3,000,000		
C. Other Public Works	2,000,000		
			10,000,000
Total			£35,000,000

* ORDINANCE

TO ESTABLISH A WATER BOARD FOR THE
WITWATERSRAND AREA.

Assented to 8th May, 1903.

WHEREAS the existing supply of water for the area known as the Witwatersrand District is inadequate to meet the growing demands of the inhabitants industries and trades of and within the said area ;

And whereas it is desirable to establish and incorporate a board for the purpose of supplying the said area with water ;

And whereas it is necessary for the purpose aforesaid that the said board should be incorporated by Ordinance ;

Now therefore be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

Interpreta-
tion of terms.

1. In this Ordinance unless the context otherwise requires :
“ The board ” means the Rand Water Board as established and constituted by this Ordinance ;

† “ *Local Authority* ” or “ *Local Authorities* ” mean and include the Councils of the Municipalities of Johannesburg Krugersdorp Germiston and Boksburg and the Urban District Boards of the Urban Districts of Roodepoort-Maraïsburg and Springs.

“ Limits of supply ” means the area included within the ‡ *magisterial districts of Johannesburg, Boksburg, Germiston and Krugersdorp* or any extension thereof under the provisions of section *twenty-six* of this Ordinance

“ Land ” means and includes :

- (a) land and other fixed property or the usufruct thereof ;
- (b) all land held under any tenure or under lease or stand or claim licence ;
- (c) any servitude over land.

Establish-
ment of
board.

2. There shall be and is hereby established a board to be known as the Rand Water Board for the purpose of supplying water within the limits of supply.

Incorporation
of board.

3. The members of the board for the time being shall be a body corporate with perpetual succession and a common seal.

Constitution
of the board.

4. *Repealed by Ordinance No. 48, 1904, section six, and new provisions made.*

* See Ordinances Nos. 48, 1904 ; 30, 1905 ; 21, 1906 ; and Act No. 22, 1909.

† Words in italics substituted by Ordinance No. 48, 1904, section *two*.

‡ Words in italics inserted by Act No. 22, 1909, section *one*.

5. *Repealed by Ordinance No. 48, 1904, section six, and new provisions made.* Appointment of members of board.

6. *Repealed by Ordinance No. 48, 1904, section six, and new provisions made.* Increase of number of members of board.

7. *Repealed by Ordinance No. 48, 1904, section six, and new provisions made.* Disqualification.

8. Any casual vacancy in the board occurring by death resignation disqualification or otherwise shall be filled up by the constituent authority represented by the vacating member as soon as reasonably practicable after the occurrence of the vacancy but a member so appointed shall retain his office so long only as the vacating member would have retained the same if no vacancy had occurred. Casual vacancies.

9. Any member of the board either individually or as a member of a partnership company or corporation may provided that he first discloses to the board that he is interested and that such disclosure is duly minuted contract with the board or be interested in any operation undertaking or business of the board and may derive or retain for his own use any profits resulting therefrom. No member of the board shall vote in respect of any matter in which he is so interested as aforesaid. Members' interests in contracts with the board.

10. A person shall be disqualified for being a member of the board if he is convicted of any crime and sentenced to imprisonment with hard labour without the option of a fine or to any greater punishment or is adjudged insolvent or is declared to be of unsound mind. Disqualification of member guilty of crime or adjudged insolvent, etc.

11. No act of the board shall be rendered invalid or illegal by reason only of any vacancy in the board or of any irregularity in the appointment or continuance in office of any member of any of the constituent authorities or in the appointment of any member of the board or of any person not qualified or ceasing to be qualified as a member of the board. Acts of board not to be invalidated.

12. Any member of the board may be granted leave of absence from the meetings of the board for such period as the board may think fit; provided that the constituent authority represented by such absent member may appoint another member under the provisions of section *five* of this Ordinance to represent such constituent authority and to act in the place of the absent member during the period for which leave of absence may have been granted by the board. Leave of absence.

13. The Chairman of the board may be granted leave of absence by the Lieutenant-Governor and it shall be lawful for the Lieutenant-Governor to appoint some person to be an acting chairman of the board during the absence on leave of the chairman. Leave of absence for chairman.

14. (1) Meetings of the board shall be held at such time and place as the board from time to time may resolve and appoint. Meetings of the board.

(2) The chairman may at any time call an extraordinary meeting. If the chairman refuses to call a meeting after a requisition for that purpose signed by three members of the board has been presented to him any three members of the board may forthwith on that refusal call a meeting. If the chairman (without so refusing) does not within seven days after such presentation call a meeting any three members of the board may on the expiration of those seven days call a meeting.

Notice of meetings.

15. Three clear days' notice of a meeting of the board shall be given to all the members of the board in such manner and form as the board may from time to time determine. The chairman may in any case of urgency direct that any less notice shall be sufficient for summoning a meeting of the board provided that the reasons for such urgency shall be specified in the notice summoning the meeting. The accidental omission to give any such notice as is referred to in this section to any of the members of the board shall not invalidate any resolution passed at any such meeting.

Quorum at meetings of the board.

16. The quorum at all meetings of the board from time to time shall be not less than five members.

Deputy chairman of the board.

17. At the first meeting of the board and subsequently at a meeting to be held in the month of February in each year the board shall appoint one of their number to be deputy chairman for the ensuing year. At all meetings of the board the chairman or in his absence the deputy chairman or in the absence of both the chairman and the deputy chairman some member of the board chosen by the members present shall preside.

Minutes.

18. Minutes of the proceedings of every meeting shall be drawn up and fairly entered in a book kept for that purpose and shall be signed by the chairman of the meeting to which they refer or of that at which they are read. Every such minute when so entered and signed shall in the absence of proof of error therein be considered a correct record.

Standing orders for regulation of business.

19. Subject to the provisions of this Ordinance the board may make and when made vary or revoke standing orders for the regulation of their proceedings and business and the proceedings and business of any committee of the board and for all other matters connected with or incidental to the internal management of the board and its business and duties.

Committees of the board.

20. The board may by resolution appoint and dissolve committees for such purposes as they may see fit and may delegate to any of such committees such of the duties and powers of the board as they may think fit.

Salary of chairman and appointment of officers.

21. The board shall pay to the chairman such salary as the Lieutenant-Governor shall from time to time determine and may appoint pay and remove a secretary and treasurer and such other officers and servants as they may think fit.

22. The board shall cause proper books of account and other Accounts. books in relation thereto to be kept and shall prepare yearly balance-sheets made up to such date in each year as the board may from time to time determine showing in all necessary detail the assets and liabilities receipts and expenditure of the board and shall transmit a copy of such balance-sheet to each of the constituent authorities within two months of the date to which such balance-sheet shall be made up.

* 23. (1) *The Lieutenant-Governor shall from time to time appoint one or more persons to examine the accounts of the board and the board shall by the secretary produce and lay before the person or persons so appointed all books and accounts of the board with all vouchers in support of the same and all books papers and writings in their power relating thereto. The expenses of and incidental to such audit shall be borne and paid by the board.* Audit.

(2) *For the purposes of any audit under the provisions of the last preceding section it shall be lawful for the auditor to hear receive and examine evidence upon oath (which oath such auditor is hereby empowered to administer) and by summons under his hand to require such persons as he may think fit to appear personally before him at a time and place to be stated in such summons and to produce all such books and papers as may be necessary for such audit. And any person so required who shall without lawful excuse refuse to attend in obedience to such summons or who having appeared shall refuse to be examined on oath or affirmation or to take such oath or affirmation or having taken such oath or affirmation to answer such questions as shall be put to him shall be liable to a penalty not exceeding twenty pounds for every act or offence and in default of payment to be imprisoned with or without hard labour for any period not exceeding three months unless such fine be sooner paid; provided that no conviction under this section shall be taken to exempt the person convicted from liability to do or perform the act matter or thing required to be done or performed by him or from being successively convicted and punished for every distinct commission of the same act or offence.* Hearing of evidence. Penalties.

(3) *The auditor shall disallow every payment made without due authority according to law and surcharge the same on the person or persons making or authorizing the illegal payment; and shall charge against any person responsible therefor the amount of any deficiency or loss incurred by the negligence or misconduct of that person or of any sum which ought to have been but is not brought into account by that person and shall in every case certify the amount due from such person. Every sum so certified by the auditor shall be paid by such person to the secretary or other official appointed by the board within fourteen days after the same has been so certified and if not so paid may be recovered from such person as a debt by* Disallowance of payments and surcharges.

* This section was substituted by Ordinance No. 48, 1904, section *ninety-eight*.

the auditor who shall be paid by the board his reasonable costs and expenses incurred in such proceedings. Any sum so recovered shall be paid to the secretary or other official appointed by the board.

Duties of auditor.

(4) *It shall be the duty of the auditor or auditors appointed as herein provided in addition to the ordinary duties of auditors to certify not less than once in each year whether or not :*

(a) *the accounts of the board are in order ;*

(b) *the accounts issued present a true and correct view of the financial position of the board and of its transactions and of the results of trading ;*

(c) *due provision has been made for the redemption and repayment of any moneys borrowed by the board whether in the form of Rand water stock or otherwise ;*

(d) *the value of the assets of the board has been correctly stated ;*

(e) *the amounts set aside to meet depreciation and obsolescence of plant are adequate ;*

(f) *all his or their requirements and recommendations as auditors have been complied with and carried out.*

Report.

A copy of the auditor's report shall be sent together with the balance-sheet to each of the constituent authorities.

Questions to be decided by majority of votes or by casting vote of chairman.

24. *Repealed by Ordinance No. 48, 1904, section six, and new provisions made.*

Powers of board.

25. *The board shall forthwith after the taking effect of this Ordinance proceed to formulate a scheme or schemes for supplying the area situate within the limits of supply with water and for such purpose may by themselves or any persons authorized thereto :*

(a) *search excavate and bore for water either within or without the limits of supply ;*

(b) *from time to time and at all times enter and encamp upon any land within this Colony and make plans and surveys thereof and search dig excavate bore and carry out any other works necessary for the discovery or measurement of water or for meteorological observations on in or under any land so entered upon ; provided*

(i) *that seven clear days' notice at the least be given to the owner and occupier (if any) of such land prior to the entry thereon by the board ;*

(ii) *that the board shall do as little damage as may be to such land and shall make full compensation for all damage done by them the amount thereof in case the parties differ to be settled by arbitration in manner and form *mutatis mutandis* provided by the Expropriation of Land and Arbitration Clauses Proclamation 1902 ;*

(iii) *that no entry or encampment shall be made or work done upon in under or within one hundred yards of*

- any homestead house works or buildings save with the consent of the owner or occupier thereof ;
- (c) make surveys plans sections maps drawings and estimates for the purpose of the said scheme or schemes ;
- (d) take any steps or construct any temporary works necessary for the gauging or measurement of the water rising from any spring well or fountain or flowing in any stream river watercourse or channel ;
- (e) take any steps necessary to determine the levels and direction of flow of water in any underground reservoirs or channels ;
- (f) employ such engineers architects surveyors and other experts on such terms as to remuneration and otherwise as they may think fit ;
- (g) promote legislation for the purpose of carrying out the said scheme or schemes and pay all costs charges and expenses of or incidental to the same ;
- (h) exercise put in force possess use and enjoy all such powers rights and privileges as may be hereafter conferred upon them by legislation ;
- (i) enter into any provisional agreements with any company or person for the erection or construction of any works necessary or expedient for the purpose of carrying out the said scheme or schemes or for the acquisition of such information as the board may require ;
- (j) enter into any provisional agreements with any local authority company or person within the limits of supply for the supply of water when obtained to any such authority company or person respectively in bulk for any purpose and for such remuneration and on such terms and conditions and for such period as may be provisionally agreed upon ; provided that in any provisional agreement for the supply of water to any consumer entered into by the board regard shall as far as possible be had to the point at which such water would leave the pipes mains or other works of the board and enter the pipes mains reservoirs tanks cisterns or other works of the consumer and to the distance and altitude of such point from and in comparison with the reservoirs rivers watercourses springs pumping-stations boreholes or other water supplies or works of the board from which such water is drawn or by means of which such water is supplied to the consumer ;
- (k) enter into any provisional agreements with any company or person for the acquisition of or option over any land or over any existing waterworks spring river watercourse or other source of water which in the opinion of the board may be suitable for the purpose of carrying out the said scheme or schemes ;

(l) enter into any provisional agreements with any company or person for the raising guaranteeing underwriting or subscribing any loan debentures or debenture stock proposed to be issued or created by the board for the purpose of the said scheme or schemes;

(m) generally employ such funds or moneys as may from time to time be in the possession or under the control of the board in the promotion of the said scheme or schemes in such manner as the board may think fit;

(n) do and execute all such other acts matters or things as may be incidental to or connected with the formation of the said scheme or schemes.

Lieutenant-Governor may alter limits of supply.

26. The Lieutenant-Governor may from time to time extend or vary the area comprised in the limits of supply and any such extension or variation shall when published in the *Gazette* be deemed to be for all purposes the limits of supply as defined in this Ordinance.

Lieutenant-Governor may advance moneys to the board from time to time.

27. It shall be lawful for the Lieutenant-Governor to advance to the board from time to time such moneys as he may think fit for the proper carrying out of the provisions of this Ordinance as well as for liquidating any costs charges or expenses or other debts incurred prior to the taking effect of this Ordinance in or about the promotion or preparation of the same or in or about furtherance of any scheme or schemes for the purpose of supplying water within the limits of supply and to charge the board interest thereon at a rate not less than four per cent. per annum and on such terms and conditions as to repayment as to the Lieutenant-Governor may seem proper. The moneys so advanced and the interest thereon shall constitute a liability of the board and their successors in office whether appointed under this Ordinance or appointed under any other Ordinance hereafter to be promulgated and shall be a first charge on all the property capital moneys income or revenue present or future of the board or their successors in office.

Title.

28. This Ordinance may be cited for all purposes as the Rand Water Board Incorporation Ordinance 1903.

No. 33 of 1903.]

[Promulgated 12th June, 1903.]

ORDINANCE

TO CONFIRM A CONTRACT MODIFYING THE CONCESSION GRANTED TO THE NATIONAL BANK OF SOUTH AFRICA, LIMITED.

Assented to 9th June, 1903.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. The contract in the schedule hereto entered into between the Colonial Treasurer and the General Manager of the National Bank of South Africa Limited formerly known as "De Nationale Bank der Zuid-Afrikaansche Republiek (Beperkt)" modifying in certain respects the concession granted by the Government of the late South African Republic and thereafter confirmed by the Volksraad of the said South African Republic is hereby confirmed.

Confirmation of contract with the National Bank of South Africa Limited.

2. Article *eighteen* of Law No. 2 of 1893 and so much of any other law as is repugnant to or inconsistent with the provisions of this Ordinance are hereby repealed. The other provisions of Law No. 2 of 1893 shall apply to the said bank in all respects.

Repeal.

SCHEDULE.

BE IT HEREBY MADE KNOWN that on this the 11th day of November in the year of Our Lord One Thousand Nine Hundred and Two before me EDWARD ROOTH of Pretoria Transvaal Notary Public by lawful authority duly sworn and admitted and in the presence of the subscribing Witnesses personally came and appeared :

PATRICK DUNCAN

of Pretoria in his capacity as Colonial Treasurer acting for and on behalf of the Administration of the Transvaal he the Appearer being duly authorized and empowered thereto under and by virtue of Executive Council's Resolution bearing date 3rd November 1902 certified copy of which remains filed in my Protocol of the one part and

THOMSON HENDERSON

of Pretoria in his capacity as General Manager of the National Bank of South Africa Limited (hereinafter called the Bank) he the said Thomson Henderson acting for and on behalf of the Bank and being duly authorized and empowered thereto under and by virtue of certain Resolution passed by the Board of Directors of the Bank at Pretoria on the 19th September 1902 certified copy whereof remains filed in my Protocol of the other part.

And these Apparers did respectively declare that whereas on the fifth day of August 1890 the Government of the late South African Republic granted a Concession to Messrs. Labouchere Oyens & Co. and Dr. Wilhelm Knappe to form and establish a Bank to be called De Nationale Bank der Zuid Afrikaansche Republiek Beperkt and to carry on banking business as also to establish a State Mint in the said Republic which Concession was ratified and confirmed by the

Volksraad of the said late Republic by its Resolution dated 9th August 1890 Article 1231 under and by virtue of which Resolution the said Nationale Bank der Zuid Afrikaansche Republiek Beperkt was incorporated and the liability of its Shareholders limited: And whereas thereafter to wit on the 15th day of June 1899 certain alterations in and modifications of the said Concession were approved of ratified and confirmed by the First Volksraad of the said late Republic by its Resolution of that day's date: And whereas the name of the said Nationale Bank der Zuid Afrikaansche Republiek Beperkt has recently been changed to

THE NATIONAL BANK OF SOUTH AFRICA LIMITED:

And whereas up to the date of these Presents the Bank has carried on its business and operations under and by virtue of the said Concession and the alterations and modifications therein and thereof aforesaid: And whereas the said Concession grants certain exclusive rights and privileges to the Bank as hereinafter specified and set forth and imposes certain restrictions on it and gives the Government certain rights and privileges as hereinafter specified and set forth: And whereas it is desirable that the said rights and privileges and the said restrictions shall be waived cancelled and annulled and the said Concession modified accordingly:

NOW THEREFORE THESE PRESENTS WITNESS

that the Appearers on behalf of their respective Principals have contracted and agreed as they do hereby contract and agree each with the others as follows to wit:

- (1) The Bank hereby waives and consents and agrees to the withdrawal and cancellation of all and singular the rights and privileges which are granted by or contained in certain Articles of the said Concession set forth and specified in the Schedule hereunto annexed and marked "A" and especially all exclusive privileges granted and secured to it in the said Concession including the right to issue notes which are legal tender the right to issue notes free of stamp duty and to exemption from payment of licences on its branches.
- (2) The Administration of the Transvaal (hereinafter called the Administration) hereby waives and consents and agrees to the withdrawal and cancellation of certain rights and privileges granted to the Government of the late South African Republic as also of certain restrictions imposed upon the Bank under and by virtue of certain Articles of the said Concession set forth and specified in the Schedule hereunto annexed and marked "B" and especially the right to exercise any control or supervision over the management or administration of the business or affairs of the Bank or over any alteration or amendment in its Memorandum or Articles of Association.
- (3) The said Concession is hereby modified and amended in terms of paragraphs 1 and 2 of these Presents and the Articles thereof specified and mentioned in the said Schedules A and B are hereby cancelled and annulled.
- (4) All the clauses of the said Concession as also the provisions of the said Volksraad Resolution of the 15th June 1899 shall subject to the provisions of paragraphs 1 2 and 3 of these presents remain of full force and effect provided however that the Bank shall not have the right to coin or issue BRITISH STERLING from the Mint referred to in said Concession.
- (5) This Contract is entered into subject to the approval of the shareholders of the Bank. The Bank promises and undertakes to submit these Presents for such approval without delay.

Thus done and executed at Pretoria the day month and year first before written in the presence of the witnesses Thomas Cadell and William Patrick Jones who together with the appearers and me the notary have subscribed to the original hereof now remaining filed in my Protocol.

Quod Attestor,

(Sgd.) E. ROOTH,

Notary Public.

(Seal)

SCHEDULE "A."

4. These notes shall be legal tender in the South African Republic.

The bank shall do the banking business of the Government (shall be banker of the Government) without charging any brokers' commission and shall effect all other internal affairs of the Government (for instance the transport of gold, etc.) for a remuneration in proportion to the work attached to it. This remuneration shall be fixed from time to time in concurrence with the Government.

15. The Government gives the preference to the Bank for the execution of all its foreign financial transactions (with the exception of such transactions which were already in the hands of others before the signing of this document) and on the same conditions as offered for the same by others.

All sums which at any time the Government may owe the Bank in consideration of what is stipulated in Art. 13 as described in the foregoing aliena may be taken into account when calculating the above percentage as regards the legal coin or bullion. Consequently the amount of specie which the Bank is obliged to possess can be reduced by this amount.

24. The Bank is not obliged to make any payments for loss or destroyed bank notes.

25. The Government binds itself during the term of this Concession to give to none of the existing or afterwards established banks similar privileges to those specified in Arts. 27 and 28.

All obligations binding on De Nationale Bank der Zuid Afrikaansche Republiek Beperkt in the matter of gold reserve publishing or balance sheets and payment of bank notes on presentation in the South African Republic shall also be enforced upon the Banks which issue notes.

26. Whenever the Government during the term of this concession issues paper money of its own it shall thereby forfeit its share in the profits of the Bank unless such paper money is covered in full by gold in which case its share in the profits shall not be forfeited.

27. The bank notes issued by institutions established or represented in the South African Republic shall twelve months after the Bank has commenced its business be no longer accepted by the Government Offices.

The bank notes issued by the Nationale Bank der Zuid Afrikaansche Republiek Beperkt shall be legal tender for transactions in the South African Republic. But if the Bank shall at any time fail to pay its notes in cash on presentation in accordance with clause 22 hereof the Government may thereupon declare that the notes of the Bank are either temporarily or permanently no longer legal tender.

28. The notes of the Nationale Bank der Zuid Afrikaansche Republiek Beperkt shall at all times be free from stamp duty.

29. The Bank shall be free from licence duty as imposed by law and its officials free from personal military service except when Martial Law is proclaimed.

SCHEDULE "B."

4. The Government however reserves itself the right after the first 25 years have passed to make such alterations in this concession as it shall deem necessary and desirable as regards the rights privileges stipulations contained therein.

5. The Government has the right to subscribe at each further issue at the same emission rate for which the public and the holders of Founders' Shares can subscribe and for an amount of ten (10) per cent. at the outside of such an issue and with conditions that the amount subscribed for by the Government in above manner shall be allotted to the same.

The Government binds itself always to consult the Bank before selling such shares thus obtained.

8. The management of the Bank is conducted by a Board of Directors consisting of not more than eleven persons of which the majority shall have to reside in the South African Republic; two of them are appointed by the Government and the others by the shareholders of the bank it being understood that at least half of the number appointed by the shareholders must be persons approved of by the Government.

The Board of Directors appoint two managers which appointment requires the approval of the Government. These managers are charged with the daily management according to instructions to be given to them by the Board of Directors.

9. These articles must be submitted to the Government and require its approval.

No alterations may be made in these articles without having first obtained the approval of the Government.

10. In case of either of the managers being unable to fulfil his duties the same shall be undertaken by one of the directors not being one appointed by the Government.

11. The domicile of the Bank as well as the head office shall be Pretoria where the ordinary meetings of the directors shall be held.

Branches and Agencies may be established by resolution of the Board of Directors. The Government shall have the right to demand the establishment of an agency in each district at such a place as may appear desirable to it.

Whenever the Board of Directors consider it desirable and with the approval of the Government local directors may be appointed from time to time whose sphere of business rights and duties are to be defined by the Board of Directors.

The branches and agencies are entirely subject to the orders of the Board of Directors in Pretoria who control as much as possible these branches; amongst other things by periodic inspection of the cash in hand.

12. Whenever the Bank resolves to issue debentures the conditions on which the same may be issued must be arranged with the Government.

The Bank is not allowed

- (a) to buy or lend money on its own shares;
- (b) to grant blank credits. Under blank credits shall not be understood such balances of account as the Bank for the conduct of its exchange business with foreign countries may have to its credit with the Bankers;
- (c) to issue debentures for a larger amount than the moneys secured upon mortgage;
- (d) hold more real estate than it requires for its own business or may have been obliged to take in foreclosure nor hold these for more than two years without the approval of the Government;
- (e) advance upon mortgage more than 3-4ths (three-fourths) of the valuation made by competent valuers;
- (f) to take anything but first mortgage;
- (g) to take securities which from the nature thereof are subject to fluctuation and therefore difficult to estimate;
- (h) to give credit to an individual person to a greater amount than 10 (ten per cent.) of the paid-up capital of the Bank;
- (j) to buy promissory notes with only one signature unless secured by real or personal security;
- (k) to issue Bank notes for an amount smaller than £1;
- (l) to carry on industrial or commercial business with the exception of dealing in coin and mint material;
- (m) to enter into partnership or association with persons firms or companies who carry on business which the Bank itself is not allowed to carry on.

The Government shall have the right from time to time and whenever in their opinion the interest of the country shall require it to vary the foregoing restrictions and to add thereto.

13. The Bank shall from time to time and whenever the Government require it make temporary advances to it the total amount thereof shall not exceed one-fourth of the actual State income of the South African Republic in the last preceding financial year and in no case to be more than one-fourth of the paid-up capital of the Bank.

For such advances interest shall be reckoned from day to day at six per cent. per annum.

State income derived from loans shall not be included in estimating the public revenue.

14. The operations of the Bank outside the South African Republic through its agencies shall consist of

- (a) the investment of surplus cash;
- (b) the accepting of deposits at interest repayable at not less than three months' notice or for such less time as the Government shall approve;
- (c) the buying and selling of drafts upon the Bank its branches or agencies in the South African Republic;

- (d) the covering of drafts drawn by the Bank its branches or agencies or places outside the South African Republic;
- (e) carrying out of financial business for the Government or inhabitants of the South African Republic.

16. The total sum of notes in circulation must be covered for at least 33½ per cent. (thirty-three and a third per cent.) by legal coin or bullion to be present at the Bank at Pretoria and at the Branch Banks.

17. As soon as possible after the end of each month after the end of each fortnight or after the end of every week (at the option of the Government) the Bank shall hand to the Government a short balance sheet made up in a manner to be approved by the Government. The Government shall publish this balance sheet in the *Staatskoerant* at the expense of the Bank.

18. The Government may appoint an officer who shall have the title of the Syndic of the Bank and shall at all times be empowered to inspect or to have inspected all transactions and affairs of the Bank and to require explanations thereof and specially to investigate or to have investigated whether the reserve prescribed by Article 16 is in existence always without interfering with the business of the Bank.

A remuneration of such officer to be agreed between the Government and the Bank shall be paid by the Bank.

19. At the end of each financial year the Bank shall present the Government a balance sheet profit and loss account and report upon the past year. These documents must be supported by proper vouchers and must be attested as correct to the satisfaction of the Government.

20. The nett profit of the Bank shall be divided as follows:

- (a) An amount of at least 5 per cent. and not exceeding 10% (ten per cent.) of the same within these limits to be stipulated by the Board of Directors goes to the reserve fund.
- (b) A cumulative dividend calculated at ten per cent. (10%) a year of the paid-up capital will be paid to the shareholders.
- (c) Of the amount remaining twenty per cent. (20%) will be paid to the Government of the South African Republic.
- (d) Of the rest one-half shall be paid as supplementary dividend to the shareholders and the other half goes to the proprietors of the founders' shares in proportion to the number of founders' shares each of them possess.

It will however be left to the discretion of the Board of Directors if this body thinks it desirable to transfer an amount not exceeding (10%) ten per cent. to the Reserve Fund of the profit which remains after the payment to the Government.

21. The revenues of the Reserve Fund will be included in the yearly profit.

The investment of the Reserve Fund will be regulated by the Board of Directors.

23. The pattern of the bank notes shall be approved of by the Government or according to their instructions by a person instructed thereto.

24. The holder of a bank note is exclusively entitled to demand from the Bank payment of the amount therein named.

31. The Bank shall make use of the Dutch language in its headings forms and publications; it has also the right to make use of other languages besides. Everyone shall have the right to demand that all correspondence all verbal and written contracts accounts etc. shall be kept and delivered in the Dutch language.

34. The Government is authorized to make such alterations in the details of this Concession in agreement with the concessionaires of the Bank as experience may show desirable but such alterations shall be subject to the approval of the Volksraad thereafter to be obtained at the next ordinary session.

No. 35 of 1903.]

[Promulgated 12th June, 1903.]

*ORDINANCE

TO REGULATE THE RETIRING PENSIONS OF THE JUDGES OF
THE SUPREME COURT.

Assented to 9th June, 1903.

WHEREAS it is desirable to regulate the pensions on which the judges of the Supreme Court of this Colony may retire ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. Any person having served the office of judge of the Supreme Court shall be entitled to retire from the said office on his attaining the age of sixty years and on so retiring or on his becoming afflicted with some permanent infirmity disabling him from the due execution of his office shall be entitled to receive a pension to be ascertained as follows : If he shall have served such office for a period of ten years he shall be entitled to a pension equal to one-half of the average annual salary which shall have been paid to him for the three years immediately preceding his retirement and if he shall have served for a period of more than ten years then he shall be entitled to receive such pension as aforesaid with an addition of one-thirtieth of the average salary which shall have been paid to him for the three years immediately preceding his retirement for each year of service after the said ten years : but in no case shall such pension exceed the amount of two-thirds of the average salary as aforesaid ; and in case any person serving the office of judge shall before he shall have served for such full period of ten years retire from office on the ground of permanent infirmity he shall be entitled to receive such pension as the Lieutenant-Governor for the time being shall in the circumstances consider to be reasonable not exceeding one-half of the salary which shall have been payable to him at the date of retirement.

2. In the case of any judge who shall have been transferred from the Supreme Court of any other British Colony to the Supreme Court of this Colony and who shall have served for not less than one year in this Colony the amount of his pension shall be calculated upon the whole combined period during which such judge shall have served in such other Colony and in this Colony in the same manner as if such service had been entirely rendered in this Colony ; provided that in no event shall his pension be less than the pension to which he would have been entitled had he continued

Rate of
pension.

Rate of
pension of
judges
transferred
from other
Colonies.

* See South Africa Act, 1909, section *ninetg-nine*.

to serve as a judge in such other Colony as aforesaid up to the date of his retirement; provided further that where any judge transferred from another Colony is under the laws of such Colony entitled on retirement to be paid any pension by the Government of such Colony the amount of pension which may be expended under this section shall be reduced by the amount so payable by any such Colony or Colonies.

3. In the case of any judge who shall be transferred from the Supreme Court of this Colony to the Supreme Court of any other British Colony the Lieutenant-Governor shall cause to be paid to such judge on his ultimate retirement the amount of pension such judge would have been entitled to receive had he retired from service in this Colony on the date of his transfer to such other Colony; provided that if such judge shall have served in the Supreme Court of this Colony for less than ten years such pension shall be at the rate of one-twentieth of his average annual salary during the three years immediately preceding his transfer or during the period of his service if such service is less than three years for each year of service.

Pension to judges transferred to other Colonies.

4. The period during which any judge of the Supreme Court shall have served as a member of the High Court of the Transvaal established by Proclamation Transvaal No. 14 1902 shall be taken to be service in the office of judge of the Supreme Court.

Service as judge of High Court to count.

5. There shall be charged on and paid out of the revenues of this Colony all such sums of money as may from time to time be granted by way of pension in accordance with this Ordinance.

Pensions to be charged on revenues of Colony.

6. This Ordinance may be cited for all purposes as the Judges' Pension Ordinance 1903.

Title.

No. 36 of 1903.]

[Promulgated 3rd July, 1903.]

ORDINANCE.

Assented to 24th June, 1903.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

Power of magistrates to enforce obedience to their orders by proceedings for contempt of court.

1. If any person shall wilfully disobey or neglect to comply with any order of a magistrate issued under the powers conferred upon him by the Magistrates Court Proclamation 1902 or by any rules and regulations annexed thereto or made thereunder such magistrate shall be empowered to impose by order upon such person a fine not exceeding fifty pounds or by warrant under his hand to commit such person to prison for any period not exceeding one month or to impose both such fine and imprisonment : provided always that an appeal shall lie to the Supreme Court against such order or warrant of commitment as in the case of an appeal against a conviction under section *forty-two** of the said Proclamation and the provisions of that section shall *mutatis mutandis* apply to any such appeal.

Title.

2. This Ordinance may be cited as the Magistrates Courts (Contempt of Court) Ordinance 1903 and shall be read as one with the Magistrates Court Proclamation 1902 and any Ordinance amending the same.

* See Act No. 18 of 1907, section *one*.

ORDINANCE

TO ESTABLISH PUBLIC HOLIDAYS IN THE TRANSVAAL.

Assented to 3rd July, 1903.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. The laws mentioned in the first schedule to this Ordinance and so much of any other law as may be inconsistent with or repugnant to the provisions of this Ordinance shall be and the same are hereby repealed.

Repeal of laws.

2. The days mentioned in the second schedule to this Ordinance shall be public holidays in this Colony. When any of the said days falls on a Sunday the following day shall be a public holiday and when Christmas Day falls on a Sunday the two following days shall be observed as public holidays.

Holidays.

*3. It shall be lawful for the Lieutenant-Governor of this Colony from time to time by notice in the *Gazette* to appoint any day mentioned in such notice to be observed as a public holiday.

Lieutenant-Governor may appoint any day to be observed as a public holiday.

4. Section *one* of Proclamation No. 11 of 1902 is hereby amended by omitting sub-sections (a) and (b) after the words "non-business days include" and substituting the words "Sunday and any day appointed by any law or by the Lieutenant-Governor under the authority of any law as a solemn fast or day of thanksgiving or as a public holiday."

Amendment of section *one* of Proclamation Transvaal No. 11 of 1902.

5. Section *five* of Proclamation No. 15 of 1902 is hereby amended by omitting the words from "Christmas Day" when they first occur in that section to "Birthday" inclusive.

Amendment of section *five* of Proclamation 15 of 1902.

6. This Ordinance may be cited as the Public Holidays Ordinance 1903.

Title.

SCHEDULE I.

Volksraad Resolution 16th September 1864 Article 37.
Volksraad Resolution 3rd June 1865 Article 12.
Proclamation Transvaal No. 30 of 1901.

SCHEDULE II.

New Year's Day.
Good Friday.
Easter Monday.
Whit Monday.
Victoria Day (May 24th).
First Monday in August (Arbor Day).
The King's Birthday (November 9th).
Dingaan's Day (December 16th).
Christmas Day and the day after Christmas Day.

* Ascension Day was declared a public holiday by Govt. Notice No. 468 of 1909 (*Gazette*, 30th April, 1909); 31st May, 1910, was declared a public holiday by Govt. Notice No. 395 of 1910 (*Gazette*, 15th April, 1910).

No. 38 of 1903.]

[Promulgated 17th July, 1903.]

* ORDINANCE

PROVIDING FOR ELECTIVE MUNICIPAL COUNCILS.

Assented to 6th July, 1903.

WHEREAS it is desirable to make provision for the election of members of councils of municipalities already established and of the council of any other municipality hereafter established to which this Ordinance shall be made to apply;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:

†1. This Ordinance shall apply to the election of members of the council of any existing municipality and of any municipality hereafter established.

Ordinance may be applied to election of members of council of all municipalities.

CHAPTER I.

MUNICIPAL COUNCIL.

Qualifications of councillors.

2. Every white male person of full age being a British subject who is qualified to vote at elections of councillors under this Ordinance shall be eligible to be elected a councillor and qualified to hold office as such but so long only as he shall continue to possess such qualification and shall not become disqualified under the terms of this Ordinance or otherwise.

Disqualification.

3. No person whose estate shall be in liquidation under assignment in trust for his creditors no person whose estate shall be sequestrated as insolvent and who shall not have obtained his rehabilitation no person not qualified to vote at elections under this Ordinance no person of unsound mind declared as such by a competent court and no person who is disqualified by this Ordinance shall be capable of being elected or if elected of continuing a councillor.

Further disqualification.

†4. No person holding any office or place of profit under or in the gift of the council shall be capable of being elected or of continuing a councillor.

No councillor to accept salary, etc.

5. *Repealed by Ordinance No. 26, 1906, section seventeen.*

* See Ordinance No. 58, 1903, section *seventy-one (b)*; Ordinance No. 41, 1904, section *three (b)*; Ordinance No. 49, 1904; Ordinance No. 26, 1905; Ordinance No. 24, 1906; Act No. 23, 1909.

† As to municipalities Pretoria and Johannesburg see Act No. 23, 1909, section *two (1)*.

‡ See Ordinance No. 26, 1906, sections *eleven, twelve, and thirteen.*

6. All proceedings of the council or of any person acting as mayor deputy mayor councillor or town clerk as the case may be shall notwithstanding that it be discovered that there was some defect in the election or appointment of any councillor officer or person as aforesaid or any disqualifications be as valid and effectual as if every such councillor officer or person had been duly elected or appointed and qualified.

Validity of council's proceedings notwithstanding certain defects in election.

7*. Any councillor who shall cease to possess the qualifications by this Ordinance required or who shall absent himself from the meetings of the council for four consecutive ordinary meetings without leave from the council having been had and obtained or who is a paid agent for a candidate at any municipal election under this Ordinance during his term of office or who shall become disqualified under this Ordinance shall *ipso facto* vacate his office and the mayor shall at any meeting of the council declare any such vacancy which may have occurred ; and in case any person elected a councillor shall die or become disqualified under the terms of this Ordinance or cease to be qualified to be a councillor or shall resign or shall refuse to accept the office of councillor or in case of any vacancy happening in any manner whatever then such vacancy shall forthwith be filled up in manner directed by this Ordinance but subject nevertheless to the provisions hereinafter made as to vacancies occurring within three months of the annual election ; provided always that a councillor whose seat shall have been declared vacant by the mayor may apply by motion to the Supreme Court or the Witwatersrand High court if the matter be within its jurisdiction and if such Courts be not sitting then to a judge of the Supreme Court to have such declaration set aside ; notice of the intention to make such application and the grounds thereof shall be given to the town clerk within two days after such declaration and the application shall be made within fourteen days thereafter.

Circumstances in which councillor vacates his office.

CHAPTER II.

MAYOR.

8†. At the first meeting of the council held after the first election of councillors referred to in this Ordinance and thereafter at the first meeting of the council held after every annual election of councillors the councillors present shall elect one councillor to be mayor who shall be styled mayor of the town for which he is so elected and who shall forthwith enter upon his office and continue therein until his successor be appointed after the next ensuing annual election of councillors unless his office be sooner

Appointment of mayor.

* As to municipalities Pretoria and Johannesburg see Act No. 23, 1909, section two (1). See also Ordinance No. 26, 1905, section seven.

† As amended by Ordinance No. 4, 1904, section one ; as to municipalities Pretoria and Johannesburg see Act No. 23, 1909, section two (1). See also Ordinance No. 41, 1904, section three (c), and Ordinance No. 26, 1905, section nine.

vacated; and in case of such vacancy then a successor shall at the meeting next but one of the council after such vacancy be chosen by the councillors from amongst themselves who shall forthwith enter upon his office and serve as mayor for the remainder of the period for which the vacating mayor was elected; provided always that should a mayor for any reason not be elected at a meeting as herein prescribed he may be elected at the first ordinary meeting of the council held thereafter or at a special meeting called for the purpose.

Duties
privileges
and
jurisdiction
of mayor.

9. All duties imposed on and all privileges and jurisdiction conferred upon the chairman of any municipality by any law constituting such municipality or by any law amending the same or by any other law shall after the first election of mayor under this Ordinance be imposed and conferred on the said mayor; and wherever in the said laws reference is made to the chairman of the municipality the mayor shall after the first election of mayor be taken to be meant thereby.

Council may
vote
allowance to
mayor for
expenditure
during his
term of office
consequent
on his
position.

10. It shall be lawful for the council to vote out of the moneys of the municipality to the mayor such sum as the council shall consider sufficient as an allowance for expenditure by the said mayor consequent on his position. The amount of such allowance granted to any mayor shall be fixed at the commencement of his term of office and such allowance shall not be deemed to fall within the provisions of section *five* of this Ordinance. The expenditure of such allowance shall be accounted for to the Finance Committee but shall not be subject to any other audit.

CHAPTER III.

VOTERS.

Qualifi-
cations of
voters.

11. Every white person male or female being a British subject of the age of twenty-one years and upwards who is the owner of rateable property within the municipality of the assessed value of one hundred pounds or the occupier of rateable property within the municipality of the assessed value of three hundred pounds or of premises of the gross annual value of twenty-four pounds shall be entitled to be enrolled on the voters' roll for the municipality provided that

- (1) such person shall have been the owner or occupier of property of the value aforesaid and shall have resided within the municipality for a period of three months prior to the publication of the notice mentioned in section *eighteen* of this Ordinance;
- (2) a husband and wife shall not both be entitled to be enrolled on the voters' roll in respect of the same property;
- (3) no person shall be enrolled on the voters' roll in respect of more than one ward.

12. For the purposes of the last preceding section the gross annual value of property shall mean the gross annual rent at which the premises occupied are or might reasonably be expected to be let and the term premises shall include any part of a building separately let or occupied from the rest of the building and under the exclusive control of the lessees or occupiers.

Annual value defined.

13. When more persons than one are otherwise than as members of an association society or company the owners or occupiers of any rateable property or the occupiers of premises as defined in the last preceding section of the assessed value respectively stated in section *eleven* of this Ordinance they shall if not otherwise disqualified be entitled to be enrolled on the voters' roll; provided that if in the case of joint owners the assessed value of the property when divided by the number of owners is less than one hundred pounds and if in the case of joint occupiers the assessed value of the property occupied when divided by the number of such occupiers is less than three hundred pounds or the gross annual value of such premises when similarly divided is less than twenty-four pounds only one of such owners or occupiers as the case may be to be named in writing by them all shall be entitled to be enrolled on the voters' roll.

Provisions in case of joint owners or occupiers of property.

14. Every society association or company owning or occupying property within the municipality of the assessed value mentioned respectively in section *eleven* shall be entitled to be enrolled on the voters' roll with the same rights and subject to the same restrictions as are hereinbefore given to or imposed upon persons of full age and shall be entitled to vote by a director manager secretary or other official of the society association or company duly authorized thereto whose name shall have been duly placed upon the voters' roll as representative of the society association or company.

Companies as voters.

15. The following persons shall not be qualified to vote at any election held under this Ordinance :

Disqualifications.

(1) Persons at any time convicted of treason against the Crown or murder or until the lapse of five years from the date of the expiration of the sentence of any crime for which the punishment is imprisonment with hard labour without the option of a fine unless a free pardon shall have been granted.

(2) Persons whose names do not appear upon the voters' roll for the time being.

16*. *Repealed by Ordinance 26, 1905, section two.*

Division of municipality into wards.

CHAPTER IV.†

MAKING OF VOTERS' ROLL.

17. (1) The council or some person appointed thereto by the Lieutenant-Governor shall forthwith after the passing of this

List of voters to be made annually.

* For Proclamations, etc., defining wards see Chronological Table.

† See, however, Ordinance No. 24, 1906, section *one*.

Ordinance and thereafter annually in the month of July cause a list to be made of all persons qualified to be enrolled on the voters' roll under the provisions of this Ordinance; the said list shall be sub-divided into as many parts as there are districts or wards of the said municipality and each part shall show in alphabetical order the full name address and qualification of every voter qualified to vote in respect of property within the district or ward to which such part refers.

(2) Every person entitled to be registered as a voter and who shall be the owner or occupier of rateable property in more than one of the wards of the municipality shall be entitled to elect the ward in which he will vote and should he decline or fail to make such election he shall be registered as a voter in such of the said wards as the person framing the voters' roll shall decide.

Notices of
objection
to list.

18. The town clerk or person appointed by the Lieutenant-Governor under the last preceding section after the making of such list shall cause it to be deposited in the municipal offices for inspection by the public and shall cause to be published in one or more local newspapers a notice that all objections and claims to be enrolled will be heard and determined at some time and place to be therein stated; such time shall be not less than fourteen days after the publication of the said notice.

Council to
appoint
court to
determine
objections.

19. The resident magistrate or some advocate of the Supreme Court to be appointed by the Lieutenant-Governor shall hear and determine all claims and objections and may enrol the names of any voters which have been omitted from the voters' roll and strike out the names of all persons not entitled to be enrolled: provided that no person's name shall be struck out until such person shall have had two clear days' notice of the investigation of his qualification and shall be heard in regard thereto should he so desire either personally or by an advocate solicitor or duly admitted law agent. The hearing and determining such claims and objections may be adjourned from time to time and the decision on any such claim or objection may be brought on appeal by motion to the Supreme Court or any judge thereof if notice thereof be given by any interested person within two clear days after the declaration of such decision. The court or judge hearing such application may uphold or reverse the said decision and may make such order as to costs as to such court or judge may seem right. The remuneration of the advocate appointed by the Lieutenant-Governor as aforesaid shall be fixed by the Lieutenant-Governor and shall be a charge on the funds of the municipality.

Roll to be
enforced
until new
one framed

20. The list when so settled and amended shall be the voters' roll for the municipality until the next roll shall in like manner be completed and such roll shall be deemed and taken to be conclusive and the only proof of the right of every person enrolled therein to vote for the election of councillors.

CHAPTER V.*

ELECTION OF COUNCILLORS.

§21.† Save as otherwise provided in Chapter VII the council shall consist of three councillors for each ward elected in the manner hereinafter prescribed. Election of councillors.

22.† Should at any time the number of wards be increased under the provisions of this Ordinance then upon such increase the number of councillors shall be increased by three for each ward by which the number of wards is increased and the election of councillors for the new wards shall take place as soon as possible after such wards have been created and on a date to be fixed by the Lieutenant-Governor by Proclamation in the *Gazette* in manner hereinafter provided for the election of councillors at an annual election. Provision for increase in number of councillors in event of increase of number of wards.

23.† The councillors appointed for any municipality by the Governor and holding office at the date of the taking effect of this Ordinance in such municipality shall continue to hold office until the first election of councillors under this Ordinance. Duration of term of office of councillors appointed by Governor.

¶24.‡ *The first election of councillors under this Ordinance shall take place in manner hereinafter prescribed on such date as may be notified by the Lieutenant-Governor by Proclamation in the Gazette when in case the election of councillors is by wards three councillors shall be elected for each ward. One of such councillors (being the one who stands first on the poll) shall continue in office until the day of the third annual election held in accordance with the provisions of section twenty-five and no longer and one of such councillors (being the one who stands second on the poll) shall continue in office until the day of the second of such annual elections and no longer and the remaining councillor (being the one who stands third on the poll) shall continue in office until the day of the first of such annual elections and no longer and in case there are two or more candidates who have received an equal number of votes at the said poll or in case there is no poll the returning officer shall determine by lot which of such candidates shall be elected for a period terminating on the day of the first second and third of the said annual elections respectively.* First election of councillors.

25.†|| After the first election of councillors as aforesaid there shall be an annual election of councillors which shall take place in the month of October of each and every year commencing with Annual election of councillors.

* See Ordinance No. 41, 1904, section three (b).

§ The number of councillors for Johannesburg Municipality was fixed at thirty by Proc. (Admn.) No. 42, 1903, under section fifty-four of this Ordinance; since repealed.

† As to municipalities of Pretoria and Johannesburg see now Act No. 23, 1909, section two (1).

¶ For proclamations, etc., under this section, see Chronological Table.

‡ This section substituted by Ordinance No. 49, 1904, section one.

|| See Ordinance No. 49, 1904, section two.

the year 1904 for the purpose of electing councillors to replace an equal number of councillors retiring from office on account of the expiration of their period of office and also for the purpose of filling up such casual vacancies as may be required to be filled up under the provisions of section *twenty-eight* of this Ordinance.

Duration of
councillors
term of office,

26.* (1) The councillors elected at every annual election to fill the vacancies caused by the retirement of councillors due to the expiration of the period for which they were elected shall hold office for a period of three years and the councillors elected to fill a casual vacancy requiring to be filled up under section *twenty-eight* of this Ordinance whether such election shall take place at the annual election or not shall hold office for the remainder of the term for which the councillor who has vacated office and whom he shall succeed would have otherwise remained in office.

(2) In any annual election at which councillors are to be elected to fill casual vacancies caused by the retirement of councillors due to the expiration of the period for which they were elected shall be deemed to be filled by the candidates who receive the largest number of votes at the election. The other elected candidates shall be deemed to fill casual vacancies in order according to the number of votes cast for each so that the councillor elected by the greatest number of votes shall be deemed to succeed the councillor who had he not vacated office would have remained longest in office. In case the matter cannot be determined as aforesaid owing to the equality in the votes of two or more candidates or owing to there being no poll it shall be determined by lot by the returning officer.

Vacancy.

27.* Whenever a vacancy is caused by a councillor retiring or in any other way vacating his seat the ward represented by such councillor in case the election of councillors is by wards shall elect the councillor to fill the seat so vacated.

Casual
vacancies.

28*†. When and as often as any casual vacancy shall occur in the council the councillor to be elected to fill such vacancy shall be elected in the manner provided for the election of candidates at the annual election; but if such vacancy shall occur within three months of the ensuing annual election then the vacancy save as otherwise provided in Chapter VII shall not be filled up at a special election but shall remain until the holding of the annual election of councillors under this Ordinance; provided always that such vacancies do not exceed three in number in which case they shall be filled up at a special election held for the purpose.

Returning
officer.

29.*‡ *The town clerk or if there be none such person as the Lieutenant-Governor may appoint shall be the returning officer at all municipal elections and all such elections shall be held before such*

* See Ordinance No. 49, 1904, section 3; as to municipalities of Pretoria and Johannesburg see Act No. 23, 1909, section *two* (1).

† See also Ordinance No. 26, 1905, sections *seven* and *eight*.

‡ Words in italics substituted by Ordinance No. 26, 1905, section *four*.

returning officer; provided always that no candidate for office at such election shall be capable of acting as returning officer thereat.

30. The town clerk or if there be none such person as the Lieutenant-Governor may appoint shall not less than twenty-one days prior to any election of a councillor or councillors publish a notice of such election in one or more local newspapers and in such notice shall specify a day not being less than ten or more than fourteen days from the date of giving of such notice as the day of nomination and (where the election is by wards) shall specify the particular ward or wards for which the election is to be held and shall require all candidates at such election to be nominated in manner hereinafter mentioned.

Nomination
for
councillors.

31. No person shall be a candidate at any election or qualified to be elected a councillor for any municipality or ward of a municipality unless he shall have received a requisition signed by at least twenty-five enrolled voters for such municipality or ward respectively and shall have transmitted such requisition with his acceptance thereof given under his own hand or that of his duly qualified agent to the person calling for nominations on or before the day appointed for receiving the same. If the number of candidates for any municipality or ward who are nominated as aforesaid do not exceed the number of councillors to be elected for such municipality or ward such candidates shall be deemed and taken to be elected on the day of nomination. If however there shall be less than the required number of candidates nominated then fresh nominations to fill the vacancies shall be called for and may be sent in to the person calling for them to within five days of the time fixed for the election. Should the requisite number of members not be elected it shall be lawful for the Lieutenant-Governor to appoint any duly qualified person to be a member of the council in order to make up the number of members required.

Manner of
nomination

32. In the event of the number of nominations for any municipality or ward where the election is by wards exceeding the number of councillors to be elected for such municipality or ward the town clerk or other person appointed to be returning officer as aforesaid* shall forthwith cause a notice to be published in one or more local newspapers stating the names of the candidates nominated the day upon which a poll will be taken for the election of councillors not being less than six days or more than fourteen days from the date of such notice nor less than twenty-one days from the date of the notice calling for nominations the number of vacancies to be filled and the places where the poll will be taken. And the poll shall take place accordingly and shall commence at eight o'clock in the forenoon and close at eight o'clock in the afternoon.

Notice of
election.

* Words in italics substituted by Ordinance No. 26, 1905, section *six*.

CHAPTER VI.*

THE POLLING.

Election
arrange-
ments.

33. For the purpose of any election for a municipality there shall be a polling station at some convenient place within each ward and for the purposes of an election for a ward there shall be one polling station at least in such ward. Notice shall be given by the returning officer in some paper circulating in the district and also by affixing it to the public door of the town office of the places where the polling stations shall be.

For all elections the returning officer shall provide such compartments desks ballot boxes ballot papers stamping instruments copies of register of voters and other things; appoint presiding officers and polling officers and do such other acts and things and make such arrangements to facilitate the taking of the poll as he may deem advisable for effectually conducting the election; and everything done by the returning officer shall be at the expense of the council and shall be paid out of the funds of the municipality.

Presiding
officer.

34. The presiding officer and other officers at the polling station shall keep order thereat shall regulate the number of voters to be admitted at a time and shall exclude all other persons except the returning officer the clerks the candidates the agents of the candidates and the constables on duty.

In case
candidate
desires to
retire from
contest.

35. If after a poll has been appointed at any election any candidate nominated for election shall be desirous of retiring from the candidature he may not later than three days before the day of polling sign and deliver a notice of his retirement to the returning officer who on receipt of such notice shall if the number of candidates is by such retirement reduced to the number of persons to be elected at such election declare the remaining candidates to be on that day duly elected and if the said number is not so reduced shall omit the name of the person so retiring from the list of candidates and such person shall not be capable of being elected at such election. If the number of candidates is by such retirement reduced below the number of persons to be elected the provisions of section *thirty-one* of this Ordinance relating to the case of the number of persons nominated being less than the number of persons to be elected shall *mutatis mutandis* apply.

Candidate's
agents.

36. Every candidate may if he think fit appoint by writing under his hand a person to represent him at the polling station to see that the votes are fairly taken and may also appoint in writing an agent to represent him at the counting of the votes by the returning officer.

Enquiries as
to right to
vote.

37. No enquiry shall be made at any election as to the right of any person to vote except that the polling officer may himself or at the request of the agent of any candidate put to any voter the following questions or any of them and no other:—

* See Ordinance No. 41, 1904, section *three* (b).

(1) Are you the person whose name appears as A.B. on the Voters' Roll of voters in this ward ?

(2) Have you already voted at this election in the capacity in which you now claim to vote ?

And no person who shall refuse to answer any such questions or who shall not answer the first of such questions in the affirmative and the second of such questions absolutely in the negative shall be permitted to vote.

38. Any person who shall wilfully make a false answer to any of these questions shall be liable to a penalty not exceeding fifty pounds to be recovered in the court of the resident magistrate or in default of payment to imprisonment for a term not exceeding three months.

Penalty for false answers.

39. Every voter coming to record his vote shall vote without undue delay and any voter who delays unduly in recording his vote may unless he shall forthwith proceed to vote upon being thereunto required by the presiding officer be removed from the polling station upon the instruction of the presiding officer and shall not be entitled to vote at the election.

Voter required to vote without delay at polling station.

*40. Every voter shall have as many votes as there are candidates to be elected for the municipality or ward in which he is enrolled as a voter but not more than one vote shall be given to any one candidate, provided that in the case of the municipality of Johannesburg so long only as the provisions of Chapter VII of this Ordinance apply thereto he shall vote for a number of candidates equal to at least two-thirds of the number of councillors to be elected.

Number of votes to be given by voter.

*41. The voting at all elections held under the provisions of this Ordinance shall be by ballot which shall be conducted in substance and as nearly as is material as follows :

Manner of voting.

(a) The presiding officer at the polling station in each ward hereinafter referred to as the presiding officer shall ascertain that the person coming to vote is a voter enrolled upon the Voters' Roll for that ward and having ascertained that such person is so enrolled and his number on such roll shall enter his number upon the counterfoil in the ballot paper book and shall then tear out the ballot paper corresponding to such counterfoil and having stamped the same with a perforated stamp provided for that purpose shall hand it to the voter. And every ballot paper shall be in the form set forth in the Schedule one hereto annexed with such printed instructions as the council may approve ;

(b) When the voter has received such ballot paper on which shall be printed in alphabetical order the names of all the duly nominated candidates at such election he shall take the same to the compartment and desk provided for that purpose

* As to municipalities Pretoria and Johannesburg, see Act 23, 1909, section two (1).

present to re-seal after examination each of the sealed packets received by him from the presiding officers. All the packets aforesaid together with a certificate stating the names of the councillors declared to be elected shall be enclosed together in one sealed packet and delivered to the town clerk who shall safely keep such sealed packet for six months after the expiration whereof the said packet and all papers contained therein may be destroyed in the presence of two councillors.

Sealed papers to remain unopened.

50. No such sealed packet as aforesaid shall be opened during the said period of six months unless by order of the resident magistrate the Supreme Court or any judge thereof; and if any person shall contrary to the provisions hereof wilfully break the seal or open any such packet he shall upon conviction be liable to a penalty not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Council may make regulations.

51. The Lieutenant-Governor shall have power from time to time to issue instructions and make regulations for the purpose of more effectually carrying out the provisions of this Ordinance as to the proceedings for election by ballot provided that such instructions and regulations are not inconsistent with its terms.

Immaterial mistakes not to affect validity of election.

52. No election shall be declared invalid by reason of any mistake or non-compliance with the terms of this Ordinance if it appears to the court having cognizance of the question that the election was conducted in accordance with the principles laid down in this Ordinance and that such mistake or non-compliance did not affect the result of the election.

CHAPTER VII

Containing provisions specially applicable to the municipality of Johannesburg repealed by Ordinance 26, 1905, section three, and transitory provisions made.

CHAPTER VIII.

ELECTORAL EXPENDITURE.

Electoral expense.

59. Electoral expense in this and the next succeeding chapter includes all moneys expended or expenses incurred by or on behalf or in the interests of any candidate at or in connection with any election.

Expense allowed.

60. No electoral expense shall be allowed except in respect of the following matters:

- (1) purchasing electoral rolls;
- (2) printing advertising publishing issuing and distributing addresses by the candidate and notices of meeting;
- (3) stationery messages postages and telegrams;

- (4) one committee room for each polling station ;
- (5) public meetings and halls therefor ;
- (6) scrutineers ;
- (7) one election agent for each candidate or for any number of joint candidates ;
- (8) one polling agent at each polling station and no more ;
- (9) one clerk and one messenger for conducting business in each committee room ;
- (10) the reasonable and actual personal expenses of the candidate which shall not exceed fifty pounds.

61. No electoral expenses shall be allowed in respect of any election in excess of the following rates :

Amount of expenditure allowed.

- (1) for each candidate one hundred pounds and a further two pounds for every one hundred enrolled voters over and above five hundred ;
- (2) where there are two or more joint candidates at an election ;
 - (a) for any one of such candidates the full amount mentioned in sub-section (1) ;
 - (b) for each of the remaining joint candidates one-fourth of the amount mentioned in sub-section (1).

Where the same election agent is appointed by or on behalf of two or more candidates at an election or where two or more candidates by themselves or any agent or agents hire or use the same committee room for such election or employ or use the services of the same clerks messengers or polling agents at such election or publish a joint address or joint circular or notice at such election those candidates shall be deemed for the purposes of this enactment to be joint candidates at such election ; provided that

- (a) the employment and use of the same committee room clerk messenger or polling agent if accidental or casual or of a trivial and unimportant character shall not be deemed of itself to constitute persons joint candidates ;
- (b) nothing in this enactment shall prevent candidates from ceasing to be joint candidates ;
- (c) where any excess of expense above the maximum allowed for one or two or more joint candidates has arisen owing to his having ceased to be a joint candidate or to his having become a joint candidate after having begun to conduct his election as a separate candidate and such ceasing or beginning was in good faith and such excess is not more than under the circumstances is reasonable and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate such excess shall be deemed to have arisen from a reasonable cause within the meaning of the provisions respecting the allowance by the court of an exception from the provisions of this Ordinance which would

otherwise make an act an illegal practice and the candidate and his election agent may be relieved accordingly from the consequences of having incurred such excess of expenses.

Payments to candidates.

62. All moneys provided by any person other than the candidate for any electoral expense shall be paid directly to the candidate personally.

Sending in and payment of claims for election expenses.

63. (1) Every payment made by an election agent whether by himself or a sub-agent in respect of any expenses incurred on account of or in respect of the conduct or management of an election shall except where less than forty shillings in all in any one account be vouched for by a bill stating the particulars and by a receipt.

(2) Every claim against a candidate at an election or his election agent in respect of any expenses incurred on account of or in respect of the conduct or management of such election which is not sent in to the election agent within the time limited by this Ordinance shall be barred and shall not be paid.

(3) Except as by this Ordinance permitted the time limited by this Ordinance for sending in claims shall be twenty-one days after the day on which the candidates returned are declared elected.

(4) All expenses incurred by or on behalf of a candidate at an election which are incurred on account of or in respect of the conduct or management of such election shall be paid within the time limited by this Ordinance and not otherwise.

(5) Except as by this Ordinance permitted the time limited by this Ordinance for the payment of such expenses as aforesaid shall be forty-two days after the day on which the candidates returned are declared elected.

(6) If the election agent in the case of any claim sent into him within the time limited by this Ordinance disputes it or refuses or fails to pay it within the said period of forty-two days such claim shall be deemed to be a disputed claim.

(7) The claimant may if he thinks fit bring an action for a disputed claim in any competent court and any sum paid by the candidate or his agent in pursuance of the judgment or order of such court shall be deemed to be paid within the time limited by this Ordinance and to be an exception from the provisions from this Ordinance requiring claims to be paid by the election agent; provided that for the purposes of this sub-section "competent court" shall include "Magistrates' Court."

(8) On cause shown to the satisfaction of the court such court on application by the claimant or by the candidate or his election agent may by order give leave for the payment by a candidate or his election agent of a disputed claim or of a claim for any such expenses as aforesaid although sent in after the time in this section mentioned for sending in claims or although the same was sent in to the candidate and not to the election agent.

(9) Any sum specified in the order of leave may be paid by the candidate or his election agent and when paid in pursuance of such leave shall be deemed to be paid within the time limited by this Ordinance.

64. Within thirty days after the result of any election has been declared every candidate at such election and in the case of joint candidates such candidates jointly shall sign before a justice of the peace and file with the returning officer at the election all vouchers for and a true return of his electoral expenses showing

Returns.

- (a) all electoral expenses;
- (b) all disputed and unpaid claims;
- (c) all receipts for electoral expenses under section *sixty-three* in the form in schedule *two* hereto annexed.

65. The returning officer at an election shall as regards all returns and vouchers filed pursuant to this chapter

Publication and inspection of returns.

- (1) forthwith publish in the *Gazette* particulars of the total amount of the electoral expenses of the candidate arranged under the headings of the paragraphs in section *sixty*;
- (2) keep the returns and vouchers open for public inspection without fee at reasonable hours for three months after filing;
- (3) during the same period supply copies of or extracts from the return and vouchers at sixpence per folio of seventy-two words.

66. If on petition to the Supreme Court against the return of a candidate it shall be proved that the return required in section *sixty-four* has not been duly rendered or if there shall be proved any electoral expense on any matter other than the matters allowed by section *sixty* or in excess of the rates allowed by section *sixty-one* the election shall be declared void unless the candidate shall satisfy the court that such expense was neither directly nor indirectly incurred by him or on his behalf or that he had neither directly nor indirectly sanctioned countenanced nor approved of the same in any way.

Candidate to prove that he has not incurred illegal expense.

67. Notwithstanding anything contained in the last preceding section if any candidate prove to the Supreme Court that his failure to file a return or voucher as required by section *sixty-four* has arisen from illness or inadvertence or any reasonable cause of a like nature and not from any want of good faith; or that any error omission or false statement in the return or voucher filed has similarly arisen the court may permit the filing of the return or vouchers or of a new return or fresh vouchers or the amendment of the return or vouchers filed and may exonerate the candidate from all liability in the matter.

Failure to file return.

68. (1) On or before the day of nomination at an election a person shall be named by or on behalf of each candidate as his agent for such election in this Ordinance referred to as the election agent.

Election agent.

(2) A candidate may name himself as election agent and thereupon shall so far as circumstances admit be subject to the provisions of this Ordinance both as a candidate and an election agent and any reference in this Ordinance to an election agent shall be construed to refer likewise to the candidate acting in his capacity of election agent.

(3) On or before the day of nomination the full name and address of the election agent of each candidate shall be declared in writing by the candidate or some other person on his behalf to the returning officer and the returning officer shall forthwith give public notice of the name and address of every election agent so declared and if no such declaration in writing shall be so made on or before the day of nomination the candidate shall be deemed and taken to be his own election agent and may make no other appointment of an election agent for the purposes of this Ordinance.

(4) One election agent only shall be appointed for each candidate or any number of joint candidates but the appointment may be revoked and in the event of such revocation the candidate shall be deemed and taken to be his own election agent unless such revocation takes place on or before the day of nomination or not less than three clear days before the day appointed for the taking of the poll in which case the candidate may forthwith upon such revocation declare in writing to be delivered in no case less than three clear days before the day of polling to the returning officer that he appoints another election agent whose name and address shall forthwith be notified by the returning officer by public notice.

(5) The election agent of a candidate shall appoint every polling agent scrutineer clerk and messenger employed for payment on behalf of the candidate at an election and hire every committee room hired on behalf of such candidate.

CHAPTER IX.

CORRUPT AND ILLEGAL PRACTICES.

69. "Corrupt practice" means any of the following offences: treating undue influence bribery and personation and aiding abetting counselling and procuring the commission of any of such offences.

70. (1) Every person who corruptly by himself or by any other person either before during or after an election directly or indirectly gives or provides or pays wholly or in part the expense of giving or providing any meat drink entertainment lodging or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the

Definition of
corrupt
practices.

Treating
defined.

election or on account of such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election; and

(2) Every voter who corruptly accepts or takes any such meat drink entertainment lodging or provision; shall be deemed guilty of treating.

71. (1) Every person who directly or indirectly by himself or by any other person on his behalf makes use of or threatens to make use of any force violence or restraint or inflicts or threatens to inflict by himself or by any other person any temporal or spiritual injury damage harm or loss upon or against or does or threatens to do any detriment to any person in order to induce or compel such person to vote or refrain from voting or on account of such person having voted or refrained from voting at any election; and

Undue
influence
defined.

(2) Every person who by abduction duress or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise by any voter or thereby compels induces or prevails upon any voter either to give or to refrain from giving his vote at any election; shall be deemed guilty of undue influence.

72. (1) Every person who directly or indirectly himself or by his agent gives lends or agrees to give or lend or offers promises or promises to procure or to endeavour to procure any money or valuable consideration to or for any voter or to or for any person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting or corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election;

Bribery
defined.

(2) Every person who directly or indirectly himself or by his agent gives lends or agrees to give or lend or offers promises or promises to procure or to endeavour to procure any money or valuable consideration to or for any voter or to or for any person on behalf of any voter or to or for any other person for acting or joining in any procession before or during any election;

(3) Every person who directly or indirectly himself or by his agent gives or procures or agrees to give or procure or offers promises or promises to procure or to endeavour to procure any office place or employment or any profit advancement or enrichment to or for any voter or to or for any person on behalf of any voter or to or for any other person in order to induce such voter to vote or refrain from voting or corruptly does any such act as aforesaid on account of any voter having voted or refrained from voting at any election;

- (4) Every person who directly or indirectly himself or by his agent makes any such gift loan offer promise procurement or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the return of any person to serve as a councillor or the vote of any voter at any election ;
- (5) Every person who upon or in consequence of any such gift loan offer promises procurement or agreement procures or engages promises or endeavours to procure the return of any person to serve as a councillor or the vote of any voter at any election ;
- (6) Every person who advances or pays or causes to be paid any money to or to the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election ; provided always that this enactment shall not extend or be construed to any money paid or agreed to be paid for or on account of any lawful expenses *bona fide* incurred at or concerning any election ;
- (7) Every voter who before or during any election directly or indirectly himself or by his agent receives agrees or contracts for any money gift loan or valuable consideration office place or employment for himself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any election ;
- (8) Every person who after any election directly or indirectly himself or by his agent receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting at any election ;
- (9) Every person who either directly or indirectly himself or by his agent corruptly conveys or transfers any property or pays any money to any person for the purpose of enabling him to be registered as a voter thereby to influence his vote at any future election and every candidate or other person who either directly or indirectly pays any money on behalf of any voter for the purpose of inducing him to vote or refrain from voting and every person on whose behalf and with whose privity any such conveyance transfer or payment as in this section is mentioned is made ; and
- (10) Every candidate who himself or by his agent convenes or holds any meeting of voters in any house licensed for the sale of liquors under the Liquor Licensing Ordinance

1902 or any amendment thereof **save in such parts of licensed premises as are by the proviso to section eighty-four exempted from the operation of the said section;* shall be deemed guilty of bribery.

73. Every person who at any election applies for a ballot paper in the name of some other person whether that name is that of a person living or dead or of a fictitious person or who having voted once at any such election applies at the same election for a ballot paper in his own name shall be guilty of personation.

Personation defined.

74. If upon the trial of an election petition the court finds that any corrupt practice has been committed in reference to such election by or with the knowledge and consent of any agent of a candidate at such election the election of such candidate shall if he has been elected be null and void ; and if such offence has been committed by or with the knowledge and consent of the candidate or his election agent then in addition to such election being declared null and void such candidate shall not be capable for a period of five years of being elected as a councillor for any municipality or of holding any judicial appointment or appointment as justice of the peace.

Punishment of candidate personally or by his election agent guilty of a corrupt practice.

75. (1) A person who commits any corrupt practice other than personation or aiding abetting counselling or procuring the offence of personation shall on conviction be liable to imprisonment with or without hard labour for a term not exceeding two years or to a fine not exceeding five hundred pounds.

Punishment of a person guilty of corrupt practices.

(2) A person who commits the offence of personation or of aiding abetting counselling or procuring the commission of that offence shall on conviction be liable to imprisonment with or without hard labour for a period not exceeding two years.

(3) A person who is convicted of any corrupt practice shall in addition to any punishment hereinbefore provided be incapable during the period of five years from the date of his conviction of being enrolled as a voter or elected as a councillor for any municipality or of holding any judicial appointment or appointment as justice of the peace and if elected a councillor his seat shall be vacated from the time of such conviction.

Illegal Practices.

76. (1) If any person votes or induces or procures any person to vote at any election knowing that he or such person is prohibited by this or any other Ordinance from voting or is not qualified or has ceased to be qualified to vote at such election he shall be guilty of an illegal practice.

Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.

(2) Any person who before or during an election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

* Words in italics added by Ordinance No. 26, 1905, section eleven.

(3) Provided that a candidate shall not be liable nor shall his election be avoided for any illegal practice under this section committed by his agent not being his election agent without his knowledge or consent.

Punishment
on conviction
of illegal
practice.

77. A person guilty of an illegal practice whether under the last preceding section or under the provisions hereinafter contained shall on summary conviction be liable to a fine not exceeding seventy-five pounds or to be imprisoned for any period not exceeding six months with or without hard labour and shall in addition be incapable during a period of two years from the date of his conviction of being registered as a voter or voting at any election held for the electorate in which the illegal practice has been committed.

No expenses
allowed in
excess of
maximum
fixed in this
Ordinance.

78. (1) Subject to such exception as may be allowed in pursuance of this Ordinance no sum shall be paid and no expense shall be incurred by a candidate at an election or his election agent or by any other person whether before during or after an election on account of or in respect of the conduct or management of such election in excess of any maximum amount in that behalf specified in this Ordinance.

(2) Subject to such exception as may have been allowed in pursuance of this Ordinance no claim in respect of any expenses incurred on account of or in respect of the conduct or management of an election shall be paid in contravention of the provisions of section *sixty-three* of this Ordinance.

Any candidate or election agent or any other person who knowingly acts in contravention of this section shall be guilty of an illegal practice; provided always that anything to the contrary notwithstanding in section *eighty* of this Ordinance when on an election petition the court finds that it has been proved by a candidate that any payment made by an election agent in contravention of sub-section (2) of this section was made without the sanction or connivance of such candidate the election of such candidate shall not be void nor shall he be subject to any incapacity under this Ordinance by reason only of such payment being made in contravention of sub-section (2) of this section.

No person
shall be
employed for
payment
save as
authorised
in this
Ordinance.

79. (1) No person shall for the purpose of promoting or procuring the election of a candidate at any election be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever except for any purposes or capacities mentioned in this Ordinance or except so far as payment is authorised by this Ordinance.

(2) Subject to such exception as may be allowed in pursuance of this Ordinance if any person is engaged or employed in contravention of this section either before during or after an election the person engaging or employing him shall be guilty of an illegal practice and the person so engaged or employed shall also be guilty of an illegal practice if he knew that he was engaged or employed contrary to law.

80. If upon the trial of an election petition the court finds that any illegal practice is proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election or his election agent the election of such candidate shall if he has been elected be null and void and he shall not be capable of being elected a councillor for any municipality for a period of three years from the date of such finding or of holding any judicial appointment or the appointment of justice of the peace and he shall further be subject to the same incapacities if he has been convicted by any competent court of an illegal practice.

Penalty for
connivance
of candidate
at illegal
practices.

Illegal Payment and Hiring.

81. Every person who knowingly provides money for any payment which is contrary to the provisions of this Ordinance or for replacing any money expended in any such payment except where the same is allowed in pursuance of this Ordinance to be an exception shall be guilty of illegal payment.

Persons
providing
money
contrary to
this Ordinance
guilty of
illegal
practice.

82. Every person who corruptly induces or procures any other person to withdraw from being a candidate at an election in consideration of any payment or promise of payment and every person who withdraws in pursuance of such inducement or procurement shall be guilty of illegal payment.

Corrupt
withdrawal
from a
candidature.

83. Every bill placard poster pamphlet or other printed matter having reference to an election shall bear upon the face thereof the name and address of the printer and publisher thereof and every person who prints publishes or posts or causes to be printed published or posted any such printed matter as aforesaid which fails to bear upon the face thereof the name and address of the printer and publisher shall if he is the candidate or the agent of the candidate be guilty of an illegal practice and if he is not the candidate or the agent of a candidate shall be guilty of illegal payment.

Name and
address of
printer on
placards.

84. It shall not be lawful to use :

- (a) any premises on which the sale by retail of any intoxicating liquor is authorized by a licence ;
- (b) any premises where any intoxicating liquor is sold or is supplied to members of a club society or association other than a permanent political club ;

or any part of any such premises as a committee room for the purpose of promoting or procuring the election of a candidate at an election.

Use of
committee
room in
house for
sale of
intoxicating
liquor or
refreshment
to be illegal
hiring.

Every person who hires or uses any such premises or any part thereof for a committee room ; or lets such premises or part knowing that it was intended to use the same as a committee room ; shall be guilty of illegal hiring.

Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices or the holding of public meetings or of arbitrations if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

*85. It shall not be lawful for any person to hire any conveyance for conveying voters to the poll nor shall it be lawful for any person to let for hire a conveyance for such purposes; provided that this section shall not prevent any voter hiring a conveyance for the purpose of conveying himself or any of the members of his household to and from the polling station. Any person knowingly contravening the provisions of this section shall be guilty of an illegal hiring.

86. Without prejudice to the provisions hereinbefore contained as to the offence of bribery:

(1) a person guilty of the offence of illegal payment or hiring shall on summary conviction be liable to a fine not exceeding fifty pounds; and in default of payment to imprisonment with or without hard labour for a period not exceeding three months;

(2) a candidate or an agent of a candidate who is personally guilty of an offence of illegal payment or hiring shall be guilty of an illegal practice.

87. No action or suit shall be maintainable by any licensed publican or any owner or keeper of any shop booth tent or other place of entertainment against any candidate or any agent of any such candidate for any liquor food or refreshment or any kind whether for man or beast supplied upon the credit of any such candidate or agent during the progress of any election under this Ordinance.

*Excuses and Exceptions for Corrupt or Illegal Practices
or Illegal Payment and Hiring.*

88. When upon the trial of an election petition the court finds that a candidate at such election has been guilty by his agents of the offence of treating and undue influence and illegal practice or of any of such offences in reference to such election and further that the candidate has proved:

(a) that no corrupt or illegal practice was committed at such election by the candidate himself and the offences mentioned in the said finding were committed contrary to his orders and without his sanction or connivance;

(b) that such candidate took all reasonable means for preventing the commission of corrupt and illegal practices at such election;

(c) that the offences mentioned in the finding were of a trivial unimportant and limited character; and

* As amended by Ordinance No. 26, 1905, section twelve.

Illegal hiring for conveyance of voters to poll.

Punishment of illegal payment or hiring.

Actions for liquor or refreshment supplied at elections not to be maintainable.

Report exonerating candidate in certain cases of corrupt and illegal practice by agents.

(d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate; then the election of such candidate shall not by reason of the offences mentioned in the report be void nor shall the candidate be subject to any incapacity under this Ordinance.

89. When it appears to the court that any act or omission of a candidate at any election or of his agent or of any other person which would by reason of being a payment engagement or contract in contravention of this Ordinance or of otherwise being in contravention of any of the provisions of this Ordinance be but for this section an illegal practice payment or hiring arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature and in any case did not arise from any want of good faith and under the circumstances it seems to the court to be just that the candidate and the agent and other person or any of them should not be subject to any of the consequences under this Ordinance of such act or omission the court may make an order allowing such act or omission to be an exception from the provisions of this Ordinance which would otherwise make the same an illegal practice payment or hiring and thereupon such candidate agent or person shall not be subject to any of the consequences under this Ordinance of the said act or omission.

Power of court to except innocent act from being illegal practice etc.

Disqualification of Electors.

90. Every person guilty of a corrupt or illegal practice or of illegal payment or hiring at an election is prohibited from voting at such election and if any such person votes his vote shall be void.

Prohibition of persons guilty of corrupt or illegal practices etc. from voting.

91. Every person who in consequence of conviction or of the report of the court has become under this Ordinance or any other Ordinance for the time being in force relating to corrupt or illegal practices incapable of voting at any election is prohibited from voting at such election and his vote shall be void if any such person vote.

Prohibition of disqualified persons from voting.

Limitation of Time for Prosecutions.

92. (1) A proceeding against a person in respect of the offence of a corrupt or illegal practice or any other offence against this part of this Ordinance shall be commenced within six months after the offence was committed or if it was committed in reference to an election with respect to which a petition is tried by the court shall be commenced within six months after the offence was committed or within three months after the report of the court hearing an election petition is made whichever period last expires so that it be commenced within two years after the offence was committed.

Limitation of time for prosecution of offence.

(2) For the purpose of this section the issue of a summons warrant writ or other process shall where the service or execution of the same on or against the alleged offender is prevented by the absconding or concealment or act of the alleged offender be deemed to be the commencement of a proceeding but save as aforesaid the service or execution of the same on or against the alleged offender and not the issue thereof shall be deemed to be the commencement of the proceeding.

Persons charged with corrupt practice may be found guilty of illegal practice etc.

93. Any person charged with a corrupt practice may if the circumstances warrant such finding be found guilty of an illegal practice and any person charged with an illegal practice may be found guilty of that offence notwithstanding that the act constituting the offence amounted to a corrupt practice and a person charged with illegal payment or hiring may be found guilty of that offence notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

CHAPTER X.

OTHER OFFENCES.

Persons ordered by presiding officer to leave polling station.

94. Every person who shall be ordered by the presiding officer to leave the polling station under the provisions of section *thirty-four* and shall refuse to do so shall be guilty of an offence and liable to a fine not exceeding ten pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding one month.

Obstructing elections.

95. Every person who interrupts obstructs or disturbs the proceedings at an election shall be guilty of an offence and liable to the penalties in the last preceding section mentioned.

Penalty for neglect by returning officer etc.

96. (1) Every returning officer who after having accepted office as such wilfully neglects or refuses to perform any of the duties which by the provisions of this Ordinance he is required to perform shall for every such offence be liable to a penalty not exceeding two hundred pounds.

(2) Every justice of the peace presiding officer or other officer or person who wilfully neglects or refuses to perform any of the duties which by the provisions of this Ordinance he is required to perform shall for every such offence be liable to a penalty not exceeding fifty pounds.

Tampering with ballot papers and ballot boxes.

97. Every presiding officer or other person who places or is privy to placing in a ballot box a ballot paper which has not been lawfully handed to and marked by a voter or forges or counterfeits or fraudulently defaces or destroys any ballot paper or the official mark thereon shall be guilty of an offence and shall be liable on conviction to be imprisoned for any period not exceeding two years with or without hard labour. Proof that a greater number of ballot papers is found in a ballot box or is

returned by a presiding officer as having been received at a polling place than the number of voters who voted at such polling place shall be *prima facie* evidence that the presiding officer at such polling place was guilty of an offence against this section.

98. Every person shall be liable to a penalty not exceeding one hundred pounds or to be imprisoned for any period not exceeding twelve months with or without hard labour who :

Wilfully making or procuring a false claim.

(1) wilfully makes delivers or sends to any officer appointed to revise the roll of voters any claim which is false in any material particular ; or

(2) wilfully causes or procures or is in anywise concerned in the making delivering or sending of any such claim.

99. (1) Every returning officer presiding officer polling clerk scrutineer or other person who knowingly and wilfully unfastens the fold upon a ballot paper within which the number of a voter is written unless he is by the lawful command of some competent court or other tribunal required so to do ; and

Penalty for] unfastening fold of ballot paper.

(2) every returning officer presiding officer polling clerk or scrutineer who attempts to ascertain or discover or directly or indirectly aids in ascertaining or discovering the person for whom any vote is given except in the case of a person voting openly or who having in the exercise of his office obtained knowledge of the person for whom any voter has voted discloses such knowledge unless in answer to some question put in the course of proceedings before some competent court or other tribunal ; and

(3) every returning officer presiding officer polling clerk or scrutineer who places upon any ballot paper any mark or writing not authorized by this Ordinance ;

shall be guilty of an offence and on conviction thereof shall be liable to imprisonment for any period not exceeding twelve months with or without hard labour.

100. Except as authorized by this Ordinance every person who knowingly and wilfully breaks the seal of or opens any such sealed parcel as is hereinbefore mentioned unless he is by the lawful command of some competent court or other tribunal required so to do or to produce some portion of the contents of such parcel shall be deemed guilty of an offence and on conviction shall be liable to imprisonment for any period not exceeding twelve months with or without hard labour.

Penalty for breaking seal of or opening parcel.

101. No voter who within three months before or during any election shall have been retained hired or employed for all or any of the purposes of election for reward by or on behalf of any candidate at such election as agent clerk messenger or in other like employment shall be entitled to vote at such election and if he shall so vote he shall be liable upon conviction to a penalty not exceeding fifty pounds and in default of payment to imprisonment for any period not exceeding three months.

Voter employed at election not capable of voting.

CHAPTER XI.

HEARING OF ELECTION PETITIONS.

Election petitions may be presented to Supreme Court.

102. A petition complaining of an undue election of a councillor for any municipality or ward of a municipality by reason of want of qualification disqualification corrupt or illegal practice irregularity or otherwise may be presented to the Supreme Court by :

- (1) an enrolled voter in such municipality ;
- (2) some person claiming to have had a right to be elected at such election ; or
- (3) some person alleging himself to have been a candidate at such election.

Such petition is hereinafter referred to as an election petition.

Provisions as to such petitions.

103. With respect to the presentation of an election petition under this Ordinance the following provisions shall apply :

- (1) the petition shall be signed by the petitioner or all the petitioners if more than one ;
- (2) the petition shall be presented within thirty days after the result of the election has been declared by the returning officer ;
- (3) presentation of a petition shall be made by filing it with the Registrar of the Supreme Court ;
- (4) at the time of the presentation of the petition or within seven days afterwards security for the payment of all costs charges and expenses that may become payable by the petitioner
 - (a) to any person summoned as a witness on his behalf ; or
 - (b) to the member whose election or qualification is complained of (who is hereinafter referred to as the respondent) ;

shall be given by or on behalf of the petitioner ;

- (5) the security shall be to the amount of three hundred pounds ; it shall be given either by recognizance to be entered into by any number of sureties not exceeding four or by a deposit of money with the Registrar of the Supreme Court or partly in one way and partly in the other.

Service of petition on respondent.

104. Notice in writing of the presentation of a petition under this Ordinance and of the nature of the proposed security accompanied with a copy of the petition shall within ten days after the presentation of the petition be served by the petitioner on the respondent either personally or by leaving the same at his usual or last known dwelling-house or place of business and it shall be lawful for the respondent where the security is given wholly or partially by recognizance by notice in writing to be served upon the petitioner in manner aforesaid within twenty-one days from the date of the service on him of such notice to object to such

recognizance on the ground that the sureties or any of them are insufficient or that a surety is dead or that he cannot be found or that a person named in the recognizance has not duly acknowledged the same.

105. Any objection made to security given shall be heard and decided by the Supreme Court or by a judge thereof. If any objection to the security is allowed it shall be lawful for the petitioner within a further time to be fixed by the court or judge not exceeding ten days to remove such objection by a deposit of such sum of money as may be deemed proper by the said court or judge to make the security sufficient.

How objections to security to be dealt with.

If on objection made the security is decided to be insufficient and such objection is not removed in manner hereinbefore mentioned no further proceedings shall be had on the petition; otherwise on the expiration of the time limited for making objections or on the sufficiency of the security being established after objection made the petition shall be deemed to be at issue.

106. The Registrar of the Supreme Court shall as soon as may be make out a list of petitions under this Ordinance presented to the court and which are at issue placing them in the order in which they were presented and shall keep at his office a copy of such list hereinafter referred to as the election list open to the inspection of any person making application for inspection thereof. Such petitions shall be tried in the order in which they stand in such list unless the court shall otherwise order.

Registrar of Court to make list of petitions.

Trial of a Petition.

107. With respect to the trial of election petitions under this Ordinance the following provisions shall apply :

Provisions for the trial of election petitions.

- (1) every election petition shall be tried with open doors ;
- (2) the trial of election petitions may take place in any civil term upon any day prescribed by any rule or order of court ; provided that the court to which it has been presented may upon the application of any of the petitioners or respondents fix any day in or out of term for such trial ;
- (3) notice of the time and place at which an election petition will be tried shall be given by the Registrar of the Supreme Court to the parties concerned not less than fourteen days before the day on which the trial is to be held ;
- (4) the court may adjourn the trial from time to time and from place to place ;
- (5) where on the trial of an election petition praying the court to determine that some other person than the respondent is entitled to be declared duly elected in place of the respondent it is proved that any person who voted for the respondent was bribed or treated or subjected to undue influence by any one on behalf of the respondent or that such person was

guilty of personation or of an illegal practice payment or hiring every vote given for the respondent by such person shall be deducted from the total number of votes given for the respondent at the election ;

(6) at the conclusion of the trial of any election petition the court shall determine whether the respondent was duly elected or whether any and if so what person other than the respondent was or is entitled to be declared duly elected ; if the court shall determine that the respondent was duly elected such election shall be and remain as valid as if no petition had been presented against the same. If the court shall determine that the respondent was not duly elected but that some other person was or is entitled to be declared duly elected the respondent shall forthwith be deemed to have vacated his seat ; and the court shall forthwith certify such determination to the Lieutenant-Governor who shall thereupon by Proclamation in the *Gazette* declare such other person duly elected. If the court shall determine that the respondent was not duly elected and that no other person was or is entitled to be declared duly elected the seat of the respondent shall forthwith be deemed to be vacant and the court shall forthwith certify such determination to the Lieutenant-Governor who shall thereupon command that a new election shall take place for the purpose of filling up such vacancy and like proceedings shall take place in regard to such new election as are provided in regard to annual elections under this Ordinance.

108. On the trial of a petition under this Ordinance complaining of an undue election or return and claiming the seat for some person the respondent may give evidence to prove that the election of such person was undue in the same manner as if he had presented a petition complaining of such election.

Proceedings.

109. An election petition under this Ordinance shall be in such form and state such matters as may be prescribed.

110. Two or more joint candidates may be made respondents to the same petition and such petition shall be filed as one petition and be tried at the same time but for all the purposes of this Ordinance such petition shall be deemed to be a separate petition against each respondent.

111. When under this Ordinance more petitions than one are presented relating to the same election or return all such petitions shall in the list of petitions be bracketed together and shall be dealt with as one petition but such petition shall stand in the election list in the place where the last of such petitions would have stood if it had been the only petition presented unless the court or a judge thereof shall otherwise direct.

When seat claimed for another person than the respondent.

Form of petition.

Conditions when two or more joint candidates are respondents.

Petitions relating to same election to be heard together.

Witnesses.

112. Witnesses shall be summoned and sworn in the same manner as in a trial before the Supreme Court and shall be subject to the same penalties for perjury.

Summoning witnesses.

113. On the trial of an election petition under this Ordinance the court may examine any witness or any person in court although such witness or person is not called or examined by any party to the petition. After the examination of a witness as aforesaid by the court such witness may be cross-examined by or on behalf of the petitioner and respondent or either of them.

Witness not summoned may be examined.

114. No person who is called as a witness at the trial of any election petition shall be excused from answering any question relating to any corrupt or illegal practice at or connected with any election then forming the subject of inquiry on the ground that the answer thereto may criminate or tend to criminate himself: provided that where any witness shall answer every question relating to any matters aforesaid which he shall be required by the court to answer and the answer to which may criminate or tend to criminate him he shall be entitled to receive from the court under the hand of the registrar a certificate stating that such witness was upon his examination required by the said court to answer questions or a question relating to the matters aforesaid the answer or answers to which criminated or tended to criminate him and had answered all such questions or question; and if any indictment or action be at any time thereafter pending in any court against such witness for any offence under this Ordinance committed by him previous to the time of his giving his evidence and at or in relation to the election concerning or in relation to which the witness may have been so examined the court shall on production and proof of such certificate stay the proceedings in such indictment or action; provided that no statement made by any person in answer to any question put to him by or before such court shall except in cases of indictment for perjury be admissible in evidence against him in any proceeding civil or criminal.

Witness not entitled to refuse to answer because he may criminate himself but protected from consequences of such answer.

115. The reasonable expenses incurred by any person appearing to give evidence at the trial of an election petition under this Ordinance according to the scale usually allowed to witnesses on the trial of civil actions in the superior courts of law in this Colony may be allowed to such person and such expenses shall be deemed to be costs of the petition.

Witnesses' expenses.

Withdrawal and Abatement of Election Petitions.

116. An election petition under this Ordinance shall not be withdrawn without the leave of the court and after such notice has been given as such court may direct.

Petition not to be withdrawn without leave.

Substitution of petitioner may be asked for.

117. On the hearing of the application for withdrawal any person who might have been a petitioner in respect of such election to which the petition relates may apply to the court to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.

Court may order substitution.

118. The court may if it think fit substitute as a petitioner any such applicant as aforesaid and may further if the proposed withdrawal is in the opinion of the court induced by any corrupt bargain or consideration by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the substituted petitioner.

When fresh security required.

119. If no such order is made with respect to the security given on behalf of the original petitioner security to the same amount as would be required in the case of a new petition and subject to the like conditions shall be given on behalf of the substituted petitioner before he proceeds with his petition and within fourteen days after the order of substitution.

Substituted petitioners.

120. Subject as aforesaid a substituted petitioner shall stand in the same position as nearly as may be and be subject to the same liabilities as the original petitioner.

Costs of withdrawn petitions.

121. If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent.

Consent of co-petitioners required for withdrawal.

122. When there are more petitioners than one no application to withdraw a petition shall be made without the consent of all the petitioners.

Abatement by death.

123. An election petition under this Ordinance shall be abated by the death of the sole petitioner or petitioners but such abatement shall not affect the liability of the petitioner or petitioners to the payment of costs previously incurred.

Consequence of abatement.

124. On the abatement of a petition any person who might have been a petitioner in respect of the election to which the petition relates may within twenty-one days after such abatement apply to the Supreme Court or any judge thereof to be substituted as a petitioner and such court or judge may thereupon if it or he thinks fit substitute as a petitioner any such applicant who is desirous of being substituted and on whose behalf security to the same amount is given as is required in the case of a new petition.

Respondent who has given notice that he will not oppose cannot appear.

125. A respondent who has given notice that he does not intend to oppose the petition shall not be allowed to appear or to act as a party against such petition in any proceedings thereon and shall not sit or vote in the council to which he had been elected pending the result of the trial of the petition and the court shall in all cases in which such notice has been given report the same to the mayor.

Costs.

126. All costs charges and expenses of and incidental to the presentation of a petition under this Ordinance and to the proceedings consequent thereon shall be defrayed by the parties to the petition in such manner and in such proportions as the court before which the same is tried or to be tried may determine regard being had to the disallowance of any costs charges or expenses which may in the opinion of the court have been caused by vexatious conduct unfounded allegations or unfounded objections on the part either of the petitioner or the respondent and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused whether such parties are or are not on the whole successful.

Court to decide as to costs.

127. The costs may be taxed and recovered in the same manner as the costs of an ordinary action at law in the superior courts of this Colony.

Taxation of costs.

128. If any petitioner in an election petition presented under this Ordinance shall neglect or refuse for the space of one month after demand to pay to any person summoned as a witness on his behalf or to the respondent any sum certified to be due to him for his costs charges or expenses and if such neglect or refusal be proved to the satisfaction of the court to which such petition was presented every person who has entered into a recognizance relating to such petition under the provisions of this Ordinance shall be held to have made default in his said recognizance and the registrar of the said court shall thereupon certify such recognizance to be forfeited and execution may thereupon by leave of the said court be sued out thereon at the suit of any such witness or respondent from time to time as occasion may require.

Neglect to pay witnesses.

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CHAPTER XII.

MISCELLANEOUS.

129. The Town Council of Pretoria elected under the provisions of this Ordinance shall be subject and liable to every contract engagement debt and demand to which the commission appointed under Ordinance No. 26 of 1903 to supervise the government of the municipality of Pretoria is subject and liable to at the date of the taking effect of this Ordinance and in like manner shall be vested with and entitled to all rates assets and claims which at the date of the taking effect of this Ordinance the said was vested with and entitled to; and all privileges jurisdiction and duties conferred or imposed on the said commission by any law constituting it or by any other law or bye-law of the municipality shall unless inconsistent with the provisions of this Ordinance be conferred and imposed on the Town Council of Pretoria elected under this Ordinance.

Liabilities and rights of existing council of the municipality of Pretoria.

Liability and rights of existing council of Johannesburg.

Lieutenant-Governor may rectify errors or omissions in preparation of voters roll.

130. The provisions of the last preceding section shall *mutatis mutandis* apply to the Town Council of Johannesburg elected under this Ordinance in respect of the privileges jurisdiction rights and liabilities of the existing council of the municipality of Johannesburg.

‡ 131. *If through any error accident or omission anything required by law to be done in the preparation of any voters roll or in the conduct of any election is omitted to be done or is not done in the manner or within the time fixed by law the Lieutenant-Governor may order all such steps to be taken as may be necessary to rectify any such error accident or omission or may validate anything which may have been irregularly done in matter or form so that the intent and purpose of this Ordinance may have effect. The provisions of this section shall apply to any such error accident or omission in the conduct of elections held in accordance with sections four to twelve inclusive of the Municipal Corporations Amendment Ordinance 1904.*

Title.

132. This Ordinance may be cited for all purposes as the Municipalities Elections Ordinance 1903.

SCHEDULE No. 1.†

FORM OF FRONT OF BALLOT PAPER.

COUNTERFOIL No....

NOTE. — The counterfoil is to have a number to correspond with that on the back of the ballot paper.

1	BROWN (John Brown of.....Street, *.....merchant.)	
2	JONES (Henry Jones, of.....Street, *.....attorney.)	
3	ROBINSON (George Robinson, of.....Street, *.....grocer.)	
4	SMITH (Frederick Smith, of.....Street, *.....broker.)	

No..... FORM OF BACK OF BALLOT PAPER.

Election for Town Council of*.....
NOTE.—The number on the back of the ballot paper is to correspond with that in the counterfoil.

* Here insert name of Town.

‡ This section substituted by Ordinance No. 49, 1904, section five.
† As to municipalities of Pretoria and Johannesburg, see Act No. 23, 1909, section two (1).

SCHEDULE No. 2.

FORM OF RETURN OF ELECTORAL EXPENSES.

I, A.B., candidate at the election for the Council of the Municipality ofon the.....day of.....make the following return respecting my electoral expenses at the election :—

£ s. d.

Receipts.

Received of J. K..... (Here set out the name and description of every person club society or association from whom any money was received in respect of expenses.)

Expenditure.

Paid G.H., my election agent.....
Paid to I. J., clerk for.....
days' services.....
Paid to K. L., scrutineer, at..... (The names and descriptions of the agent and every clerk and scrutineer and the sum paid to each must be set out separately.)
Paid to the following persons in respect of goods supplied or work and labour done..... (The name and description and the nature of the goods supplied or the work and labour done by each must be set out separately.)
Paid hire of rooms for holding public meetings.....
Paid hire of rooms for holding committee meetings.....
Paid for miscellaneous matters..... (The name and description of each person to whom any sum is paid and the reason for which is was paid to him must be set out separately.)

In addition to the above, I am aware of the following disputed and unpaid claims, viz. :—

By T. U., for..... (Here set out the name and description of each person whose claim is disputed, the amount of the claim and the goods work or other matter on the ground of which the claim is based.)

Except as appears from the above I have not and to the best of my knowledge and belief no person has made on my behalf any payment or given promised or offered any reward office employment or valuable consideration or incurred any liability on account of or in respect of the conduct or management of said election.

I have paid the sum of pounds altogether and no more for the purpose of the election and except as specified above no money security or equivalent for money has to my knowledge or belief been paid advanced given or deposited by any one to any other person for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election.

(Signature of candidate, C.D.)

Signed this day of in the presence of E. F., Justice of the Peace.

No. 39 of 1903.]

[Promulgated 17th July, 1903.]

ORDINANCE

TO FURTHER AMEND THE JURIES ORDINANCE 1902.

Assented to 3rd July, 1903.

WHEREAS it is desirable to further amend the Jury Ordinance 1902;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

Amendment
of Jury
Ordinance
1902.

1. The Jury Ordinance 1902 shall be and is hereby amended by adding after sub-section (9) of section *six* the following new sub-section (10): " Members of the council of any municipality or urban district board."

Title.

2. This Ordinance may be cited as the Jury Ordinance 1902 Further Amendment Ordinance 1903 and shall be read as one with the Jury Ordinance 1902 and the Jury Ordinance 1902 Amendment Ordinance 1903.

No. 40 of 1903.]

[Promulgated 17th July, 1903.]

ORDINANCE

DECLARING CERTAIN LAWS, VOLKSRAAD RESOLUTIONS, ETC.,
TO BE NO LONGER OF ANY FORCE OR EFFECT.

Assented to 6th July, 1903.

WHEREAS it is desirable that certain Laws Volksraad Resolutions and Proclamations in addition to those mentioned in Proclamation Transvaal No. 34 of 1901 published in the Statute Books of the late South African Republic which have been impliedly repealed or become obsolete or are unsuitable to the change in Government in the Transvaal consequent upon the annexation thereof to His Majesty's Dominions shall be declared to be of no force or effect;

Be it enacted by His Excellency the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:

1. The Laws Volksraad Resolutions and Proclamations mentioned in the First Schedule to this Ordinance and published in the Statute Books of the late South African Republic are hereby to the extent mentioned in the third column of the said Schedule declared to be of no force or effect in this Colony.

Laws
declared no
longer of
any force.

2. The revenue laws mentioned in the Second Schedule hereto shall be and are hereby repealed.

Repeal of
certain
revenue laws.
Title.

3. This Ordinance may be cited as the Revision of Laws Ordinance 1903.

SCHEDULE I.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.*	Page in Statute Book.
Proclamation	24 3 1858	The whole	72
Law "	24 3 1858	The whole	74
Law " on Slave Trade published under Government Notice No. 77 of 1866		The whole	229
Volksraad Resolution	8 10 1866	341	253
" "	20 3 1868	449	308
" "	21 10 1868	196	310
" "	23 11 1868	304	310
" "	10 6 1869	195	318

* The figures refer to the articles of the Law or Resolution.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.*	Page in Statute Book.
Law No. 3 of 1870		The whole	367
Volksraad Resolution	9 6 1870	172	386
" "	21 6 1870	211	411
" "	21 12 1870	16	414
" "	6 9 1871	26	417
Law No. 3 of 1871		{ Last paragraph of Article 4 }	442
Volksraad Resolution	12 9 1871	42	421
" "	6 9 1871	279	426
" "	29 11 1871	401	452
" "	11 3 1873	36	475
" "	22 & 23 9 1874	2	594
" "	28 9 1874	26	594
" "	24 5 1875	116	610
" "	8 6 1876	125	662
" "	15 6 1876	230	669
Law No. 9 of 1881		The whole	990
Volksraad Resolution	6 10 1881	72	1015
" "	24 6 1882	570	1109
" "	5 7 1882	709, 710	1123
" "	6 7 1882	733	1124
" "	7 7 1882	741	1125
" "	18 6 1883	{ 363, 364, 365 366 }	1156
Law No. 4 of 1883		The whole	1184
Volksraad Resolution	19 9 1884	515	1266
Supplement to Law No. 4 of 1882, published under Government Notice No. 324 of 1884		The whole	1302
Volksraad Resolution	12 5 1885	91	1321
" "	23 5 1885	204	1330
Regulations for the transit of goods through the S.A. Republic, pub- lished under Government Notice No. 137 of 1885		The whole	1347
Volksraad Resolution	7 5 1887	51	190
" "	9 5 1888	41	37
" "	29 5 1888	279	48
" "	8 5 1889	34	140
" "	15 5 1889	104	146
" "	17 5 1889	176	146
" "	18 5 1889	185	149
" "	20 5 1889	189	150
" "	28 5 1889	284	151
" "	28 5 1889	286	152
" "	18 6 1889	448	155
" "	21 6 1889	481	157
" "	27 6 1889	560	158
" "	17 7 1889	1038	160
Law No. 14 of 1891		The whole	247
Executive Council Resolutions, Art. 582 of 9-9-1890, and Art. 662 of 9-10-1890, as confirmed by First Volksraad Resolution, Art. 96	21 5 1891	582, 662	256

*The figures refer to the articles of the Law or Resolution.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.*	Page in Statute Book.
Regulations for transit of goods through S.A. Republic, published under Government Notice No. 108 of 1891		The whole	372
Law No. 8 of 1892		The whole	422
First Volksraad Resolution ..	1 6 1892	343, 346	603&605
" "	13 6 1892	430	610
" "	21 6 1892	502	637
" "	27 6 1892	568	613
" "	28 6 1892	573	613
" "	11 8 1892	1116	625
Law No. 8 of 1893		The whole	791
First Volksraad Resolution ..	24 5 1893	175	814
" "	8 6 1893	279	816
" "	26 6 1893	467	822
" "	8 7 1893	589	827
" "	29 8 1893	1213	844
" "	30 8 1893	1241	859
" "	31 8 1893	1250	863
" "	8 9 1893	1349	871
Law No. 8 of 1894		The whole	65
Law No. 13 of 1894		5	111
Law No. 22 of 1894		{ 1, 2, 5, 6, 7, 8, 9, 11, 14, 16, 17, 18, 20, 22 }	241
First Volksraad Resolution ..	9 7 1894	746	267
" "	20 7 1894	925	292
" "	6 9 1894	1603, 1605	324
" "	7 9 1894	1618	324
" "	8 9 1894	1625	325
" "	10 & 12 9 1894	{ 1630 to 1634 and 1665 }	325
" "	13 9 1894	1686 and 1689	329
Law No. 3 of 1895		The whole	8
Law No. 4 of 1895		The whole	10
Law No. 6 of 1895 and Regulations framed thereunder		The whole	19
First Volksraad Resolution ..	16 5 1895	105	259
" "	11 6 1895	328	266
" "	14 6 1895	368	266
" "	17 6 1895	388	266
" "	22 6 1895	442	268
" "	18 7 1895	640	279
" "	16 8 1895	934	288
" "	29 8 1895	1035	292
" "	29 8 1895	1041	293
" "	3 9 1895	1095	296
" "	17 9 1895	1230	296
" "	2 10 1895	1427	298
" "	4 10 1895	1484	300
" "	5 10 1895	{ 1513, 1514 1515 }	300
" "	7 10 1895	1551	303
Law No. 14 of 1896		The whole	149
Law No. 15 of 1896		The whole	154

* The figures refer to the articles of the Law or Resolution.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., declared to be of no force.*	Page in Statute Book.
Law No. 16 of 1896		The whole	156
First Volksraad Resolution	8 5 1896	64	325
" "	8 5 1896	66	327
" "	15 5 1896	160	327
" "	16 6 1896	598	328
" "	18 6 1896	615	328
" "	8 7 1896	859	331
" "	12 8 1896	1195	336
" "	13 8 1896	1200	336
" "	26 8 1896	1265	340
" "	13 11 1896	2050	353
" "	26 11 1896	2114	354
" "	26 11 1896	2118	355
" "	27 11 1896	2130	355
" "	3 6 1897	234	167
" "	21 6 1897	369	168
" "	24 6 1897	376	169
" "	15 7 1897	578	169
" "	15 7 1897	585	169
" "	19 8 1897	883	171
" "	23 8 1897	906	172
" "	24 8 1897	924	172
" "	26 8 1897	969	173
" "	1 9 1897	1012	174
" "	6 9 1897	1041	176
" "	21 9 1897	1283	179
" "	22 9 1897	1288	181
" "	29 9 1897	1343	185
" "	30 9 1897	1350	185
" "	4 10 1897	1385	187
" "	8 10 1897	1464	187
Law No. 1 of 1898		The whole	5
Law No. 7 of 1898		The whole	15
First Volksraad Resolution	22 8 1898	1009	308
" "	25 11 1898	1830	312
Law No. 1 of 1899		The whole	1

SCHEDULE II.

Laws, Volksraad Resolutions, etc.	Date.	Extent of Law, Resolution, etc., Repealed.*	Page in Statute Book.
Volksraad Resolution	20 5 1875	96	609
" "	4 & 5 6 1876	102	658
" "	7 6 1876	118	661
" "	30 10 1884	1109, 1110	1290
" "	7 5 1887	49	190
" "	27 7 1887	1311	204
" "	24 5 1890	174	55

*The figures refer to the articles of the Law or Resolution.

B. Pro 6 of 1912

No. 43 of 1903.]

[Promulgated 17th July, 1903.]

ORDINANCE *

TO PROVIDE FOR THE LEVYING OF RATES BY
LOCAL AUTHORITIES.

Assented to 6th July, 1903.

WHEREAS it is desirable to have as far as possible uniformity throughout this Colony in the mode of making valuations of rateable property and imposing rates in municipalities and districts under the jurisdiction of urban district boards ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. From and after the taking effect of this Ordinance sections *thirty-eight to fifty-six* inclusive of the Pretoria Municipal Proclamation 1902 the Johannesburg Rating Proclamation 1902 and any other law repugnant to or inconsistent with the provisions of this Ordinance shall be and are hereby repealed but no such repeal shall affect anything done or any right acquired under the said laws. Repeal of laws.

2. The provisions of this Ordinance shall apply to all municipalities already established and to all municipalities hereafter established and to all districts under the jurisdiction of urban district boards ; provided always that the valuation rolls already made and in use for the municipalities of Pretoria and Johannesburg shall continue to be used until new rolls shall be made under the provisions of this Ordinance. Application of Ordinance.

3. In this Ordinance the following expressions in inverted commas shall have the meaning placed opposite to them unless the context clearly requires a different meaning : Definition of terms.

“ local authority ” shall mean the council of any municipality or urban district board as the case may be ;

“ chairman ” shall mean the mayor of the council of a municipality or the chairman of an urban district board as the case may be or the person acting as such ;

“ town clerk ” shall mean the person acting in the capacity of town clerk in any municipality or the person performing similar duties in the district under the jurisdiction of an urban district board as the case may be ;

“ district ” shall mean the area within the limits of a municipality or under the jurisdiction of an urban district board as the case may be ;

* See Ordinances Nos. 45, 1904 ; 29, 1905 ; 22, 1906 ; 11 (Priv.), 1906, section *sixty-four*, as to Johannesburg Town Council ; Act No. 35, 1909.

“land” shall include any buildings thereon ;
 “rateable property” shall mean and include
 (A).—[In every district not included in (B)]

All land within the district save and except

- ‡(1) land the property and in the occupation of the Crown ;
 (2) land used exclusively for public worship or for schools registered in the office of the department of public education or for both public worship and education or for charitable institutions supported entirely by voluntary contributions ;
 (3) land held under a licence or any other mining title to dig or prospect for precious metals and precious stones or base metals and any land held or occupied exclusively for the exercise of the rights under such licence or title ; provided that no land or buildings used for residential purposes or for purposes not incidental to mining operations whether by persons engaged in mining operations or otherwise shall be deemed to come within this exception.

(B)—*(*In the magisterial districts of Boksburg, Germiston, Johannesburg and Krugersdorp and in every district to which the Lieutenant-Governor may by Proclamation† in the Gazette apply the definition of rateable property hereunder.*)

Every interest in land as hereinafter defined ; with the following exceptions :

- ‡(1) any interest in land held by the Crown ;
 (2) any interest in land used exclusively for public worship or for schools registered in the office of the department of public education or for both public worship and education or for charitable institutions supported entirely by voluntary contributions in so far as such interest is held for such purposes as aforesaid ;
 (3) any licence or right to dig for or prospect for precious stones or metals on any portion of land assigned for that purpose ; and any portion of land held or occupied exclusively for the exercise of such rights ; provided that no land or buildings used for residential purposes or for purposes not incidental to mining operations whether by persons engaged in mining operations or otherwise shall be deemed to come within the exception.

‡“Interest in land” for the purposes of the definition of “rateable property” under (B) shall mean and include

- (1) land or the usufruct thereof ;
 (2) the right in and over land under a stand licence ;
 (3) any lease of land for a period of not less than ten years or for the natural life of any person mentioned therein or

* Words in italics substituted by Act No. 35, 1909, section *three (a)*.

† See Proc. (Admn.) 28, 1904, applying the definition of rateable property to municipality of Klerksdorp.

‡ But see Ordinance No. 29 of 1905 as to railway property used for residential purposes ; see also Act No. 13, 1910, sections *three (1)* and *eight*.

which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period thereof amount in all to not less than ten years ;

(4) any servitude over land ;

(5) any user of land held under a claim licence or other mining title for residential purposes or for purposes not incidental to mining operations ;

(6) **any lease of land from the Crown, or any lease of a trading stand which has been lawfully granted by the board constituted in accordance with section eighty-three of the Precious and Base Metals Act 1908.*

“ owner ” shall mean and include

(1) the person or persons in whose name shall be registered the legal title to any rateable property as above defined ;

(2) in cases where the person in whom the legal estate is vested is insolvent or dead the person in whom the administration of such property is vested as trustee executor administrator or otherwise ;

(3) in the case of any land held under a stand or claim licence or any other mining title issued under any law relating to mining for precious stones or for metals the registered holder of such licence or title ;

(4) in any case where property situated in a district in which the definition of rateable property under (A) is applicable is held under lease from the Crown or under any lease for not less than fifty years or for a period renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period thereof amount in all to not less than fifty years the lessee thereof ;

(5) *† in any case where property, situated in a district in which the definition of rateable property under (B) is applicable, is held under lease from the Crown, or in the case of a trading stand held under a lease which has been lawfully granted by the board constituted in accordance with section eighty-three of the Precious and Base Metals Act 1908, the lessee thereof.*

“ occupier ” shall mean and include any person in actual occupation of rateable property without regard to the title under which he occupies.

It shall be lawful for the Lieutenant-Governor by Proclamation in the *Gazette* to apply the definition of rateable property under the heading (B) in this section to any district on a resolution to that effect by two-thirds of the members present at a meeting of the local authority called for that purpose.

* Sub-section (6) added by Act No. 35, 1909, section *three* (b).

† Sub-section (5) added by Act No. 35, 1909, section *three* (c).

General
valuation.

4. The local authority shall from time to time but not less than once in every three years cause a valuation of all rateable property within the district to be made by one or more competent persons who shall be appointed by resolution of the said authority before he or they shall enter upon his or their duty.

Declaration
of valuer.

5. Every valuer shall before entering upon the valuation entrusted to him make before some justice of the peace a solemn declaration in the terms following :—

“ I do solemnly and sincerely declare that I will to the best of my skill and knowledge and without favour and prejudice truly and impartially appraise and value all such rateable property as I shall be required to value for the purpose of assessment and that I will conscientiously value the same at and for the full and fair value thereof. And I make this solemn declaration conscientiously intending to fulfil the same.

Declared at this day of
Before me ”

And every such declaration shall be lodged with and preserved by the local authority.

Provisional
valuation
roll.

6. The valuer or valuers shall prepare the said valuation (herein referred to as the valuation roll) in writing in such manner as to show to the best of his or their knowledge and opinion

- (1) the name and address of the owner ;
- (2) the name of the occupier (or if the properties are unoccupied that fact shall be stated) ;
- (3) description and situation of the property valued ;
- (4) nature of the interest of the owner ;
- (5) * rateable value of the property (showing the value of the land and buildings thereon separately) ;
- (6) † *any deductions to be made from the rateable value under this Ordinance or any other law.*

Basis of
valuation.

7. * The amount or sum at which the valuer or valuers shall value for the purposes of the valuation roll any rateable property shall be the full and fair price or sum which the same would in his or their judgment be likely to realize if brought at the time of valuation to voluntary sale and offered for sale upon the usual terms and conditions applicable to property of such kind ; ‡ *provided that no lease of land which is not included in the definition of “ interest in land ” under sub-section (b) of section three of this Ordinance shall in any manner be taken into account in valuing any rateable property in the land the subject of any such lease.*

Valuer to
have power
of entry and
inspection.

8. (1) Every valuer provided with written authority signed by the chairman or town clerk shall for the purpose of making any valuation as aforesaid have power to enter at all reasonable hours

* See, however, Act No. 35, 1909, section *four* ; see also Ordinance No. 45, 1904, section *one*.

† Sub-section (6) added by Ordinance No. 45, 1904, section *two*.

‡ Words in italics added by Ordinance No. 45, 1904, section *three*.

in the daytime into and upon any land or buildings within the district and shall also have power to inspect and make extracts from all registers or other records or any deeds or instruments belonging to or in the custody or possession of any Government official or any person in which are contained particulars of any rateable property whether such person is or is not interested in such rateable property. Any person who shall wilfully obstruct the valuer from exercising the powers conferred on him under this section shall be liable to the penalties in the next succeeding subsection provided.

(2) Every such valuer shall be entitled to call upon the owner or occupier of rateable property for such written particulars in regard to such rateable property as may be necessary for enabling such valuer to make a correct valuation thereof; and any owner or occupier who shall neglect within fourteen days after being called upon as aforesaid to supply such written particulars when called upon to do so shall be liable to a penalty not exceeding twenty pounds in respect of each offence and any person who shall furnish to any valuer a false statement of value or any other particulars as aforesaid shall be liable on conviction to a penalty not exceeding fifty pounds in respect of each offence.

9. When the valuation roll has been completed it shall be laid before the local authority and shall lie at its office for public inspection and any person may at all reasonable times inspect the same and take copies or extracts therefrom. The local authority shall by notice published in one or more local newspapers call upon all persons interested to lodge in writing with the town clerk within a specified time not less than fourteen days from the first publication of such notice in the form set forth in the schedule hereto notice of any objections that they may have in respect of the valuation of any rateable property valued as aforesaid or in respect of the omission therefrom of property alleged to be rateable property and whether held by the person objecting or by others or in respect of any other error omission or misdescription. No person shall be entitled to urge any objections before the valuation court hereinafter referred to unless he shall have first lodged such notice of objection as aforesaid.

Inspection of
provisional
roll.

*10. (1) After the expiration of the time specified in such notice the local authority shall appoint a valuation court consisting of not less than three persons who may or may not be members of the local authority. Such persons shall before the first sitting of the court appoint a president from among themselves. The town clerk or some other person appointed by the local authority shall act as clerk to the said court.

Valuation
Court—
duties and
proceedings.

(2) Such court shall thereafter at meetings duly called by the president or clerk proceed to consider the valuation roll and the

* See Act No. 35, 1909, section *four*.

objections made as aforesaid and shall be entitled to make such alterations or amendments in the valuation roll either by way of reduction or increase addition or omission as to it may seem expedient; provided that no alteration or amendment by way of increase or addition shall be made unless and until the person appearing to be directly affected thereby shall have had at least three days' previous notice from the clerk of the date of sitting of the court at which any proposal for such increase or addition will be considered and such person so affected may either forward any objections to such increase or addition in writing to the president or clerk before such date or present the same for consideration at such sitting and the valuation court shall duly hear and consider all such objections.

(3) At every sitting of such court three members personally present shall constitute a quorum and the president thereof if present shall preside and if absent the members of the court present shall elect a person from among themselves to act as president during such absence as aforesaid. All decisions of such court shall be arrived at by the vote of a majority of the members personally present and in case of an equality of votes the president or the member acting as such shall also have a casting vote.

(4) No person shall sit on the hearing of any matter in which he shall be directly interested or concerned as being primarily liable to pay the rates in question or any part thereof.

(5) In case for any reason there shall be vacancies in the said Court or incapacity to act so that a quorum cannot be formed the local authority may at once and without any notice appoint other persons temporarily or otherwise to fill up such vacancies or the places of the members incapable of sitting.

(6) The town clerk by publication in one or more newspapers circulating in the district shall give not less than seven days' previous notice of the date fixed for the first sitting of such court.

(7) At every sitting of such court the local authority and any person who has lodged any objection to any valuation and any person the valuation of whose property is objected to or proposed to be increased or whose property it is proposed to add to the roll may appear either in person or by counsel solicitor or admitted and licensed law agent.

(8) At every sitting of such court it shall be competent for the court to call and examine any witnesses on oath and call for the production of all such papers or documents as it may deem necessary and every valuer by whom any valuations under consideration shall have been made shall attend such court and answer on oath all questions which may be put to him by or through the court in regard thereto.

(9) The said court shall keep a record of its proceedings and a note of the assessment objection and finding in regard to each objection and such court shall cause any deposition taken before

it to be taken down in writing and signed by the deponent and shall authenticate it by the signature of the chairman as having been taken before such court and every such deposition so taken down and authenticated shall be deemed and taken to be good evidence in a prosecution for perjury.

11. When the valuation court has completed its examination of the valuation roll and has made such alterations and amendments therein as it may deem necessary the president of the court shall sign and certify the same. He shall further cause an advertisement to be inserted in one or more local newspapers not less than three times within a period of one week informing all persons interested of the completion thereof and that the same will become fixed and binding upon all parties concerned who shall not before a date fixed in such notice not being less than one month from the date of the first publication of the aforesaid advertisement appeal from the decision of the valuation court in manner provided in the next succeeding section.

Valuation
roll.

12. It shall be lawful for any person who feels himself aggrieved by the value put upon any property owned or occupied by him to appeal within one month against such valuation from the decision of the court in the last preceding section mentioned to the court of the resident magistrate of the district and such last-mentioned court shall inquire into such valuation and its decision shall be final and conclusive; provided however that if any question of law shall arise as to the principle upon which any valuation has been or should be made it shall be lawful for such resident magistrate instead of himself deciding such question at the request of the local authority or party objecting to reserve such question of law for decision by the Supreme Court and such question shall be stated in the form of a special case and may be argued before and determined by the Supreme Court and such court may make such order as to costs as to the court shall seem fit.

Right of
appeal from
decision of
Valuation
Court.

* 13. Notwithstanding anything to the contrary in this Ordinance provided the local authority may at any time direct that a valuation be made of any rateable property omitted from the valuation roll or of any new or sub-divided rateable property or of any rateable property which from any cause particular to such property arising since the last valuation thereof has materially increased or decreased in value and upon the making of any such interim valuation the same forms shall be observed and the same proceedings may take place as nearly as can be *mutatis mutandis* as are hereinbefore set forth with regard to general valuations and appeals in respect thereof excepting that in the discretion of the local authority the prescribed notices may be served in writing upon the person interested instead of being published as aforesaid.

Special
valuation.

* See Act No. 35, 1909, section *four*.

Valuation roll not to be challenged or set aside.

14. No valuation contained in any valuation roll framed under this Ordinance and no rate based thereon shall be rendered void or be affected by reason of any mistake or variance in the description of any rateable property or in the name of any owner thereof; and no valuation roll made up and authenticated in terms of this Ordinance shall be capable of being challenged or set aside by reason of any informality.

Power of local authority to impose rates.

15. It shall be lawful and competent for the local authority to impose a rate or rates in or for each and every year of such amount or amounts in the pound as it shall think fit but not except with the sanction of the Lieutenant-Governor exceeding threepence in the pound on the value arrived at as aforesaid and as appears in the valuation roll of all rateable property within the district.

Special rates.

*16. Notwithstanding anything herein contained in case any abnormal or extraordinary expenditure shall be incurred by the local authority in respect of some particular area of rateable property over and above expenditure common to the whole district the local authority may by resolution determine that such abnormal or extraordinary expenditure (and whether the outlay in respect thereof has or has not actually been made) shall be in whole or part a special charge upon the rateable property or some portion thereof within such particular area to the exclusion of the rest of the municipal area and fix the amount of the special rates thereon (not however in any case except with the sanction of the Lieutenant-Governor to exceed threepence in the pound) and the persons and times by whom and when the same is payable.

Notice of rates.

†17. Every rate imposed by the local authority shall become due and payable upon a day to be fixed by it of which day and of the amount of which rate the local authority shall give at least thirty days' notice by advertisement in a newspaper circulating in the district and in such other mode as it may by resolution direct.

Payment of rates.

‡18. Whenever the local authority shall have given such notice as aforesaid of the day upon which such rate will become due and payable it shall be the duty of all persons liable for such rate to pay the amount thereof at the offices of the local authority failing which defaulters will be liable to legal proceedings for the recovery of the amounts due by them respectively.

Enforcement of payment of rates.

‡19. If after the time fixed for the payment of any such rate as aforesaid any person fail to pay any rate due by him it shall be competent for the local authority to cause a printed or written demand to be made upon such person to pay the amount stated

* As to imposition of special rates see Govt. Notices Nos. 209 and 210, 1907 (*Gazette*, 15th February, 1907); 604, 1907 (*Gazette*, 31st May, 1907); 76, 1910 (*Gazette*, 21st January, 1910); see also Ordinance No. II (Priv.), 1906, section *sixty-two* as to abnormal or extraordinary expenditure.

† See Ordinance No. 45 of 1904, section *four*, enabling Local Authorities to remit or forego payment of rates in certain cases.

‡ See Ordinance No. II (Priv.), 1906, section *thirty-five*, as to Johannesburg Town Council.

in such demand within fourteen days after service thereof. And in case any person who shall have had such demand delivered to him personally or left at his ordinary place of residence or place of business or office shall make default it shall be competent for the local authority to apply to the magistrate for a summary warrant to recover such rates together with interest as hereinafter provided from the persons liable to pay the same; which warrant the said magistrate shall grant on production of a list of the names and addresses of the persons so in default and the amount together with interest as by this Ordinance provided respectively due by them with a certificate by the town clerk or town treasurer that they have been severally required to make payment of the said rates by notice as aforesaid and that such rates are due by them and do not exceed the maximum rates fixed by or under this Ordinance; and every such warrant shall contain every authority and be executed in all respects as though it were a writ of execution issued out of the court of the resident magistrate and the messenger of the court in executing the same shall conform to such rules and make such charges as are for the time being applicable to writs of execution of such court as aforesaid.

*20. Notwithstanding the provisions of the last preceding section the local authority may at its discretion after the time fixed for the payment of any such rates as aforesaid recover from the person in default (without further notice or demand) the amount of the rates and interest thereon due by such person irrespective of the amount thereof by action in the court of the resident magistrate of the magisterial district whether the person liable for the same shall be resident within the jurisdiction of such court or not. In case it shall not be possible to effect service of summons within the limits of the jurisdiction of such court as aforesaid then such service shall be effected in such manner as the said court shall direct.

Recovery of rates.

*21. In case any rates imposed under the provisions of this Ordinance shall remain unpaid after the date fixed by the local authority for payment thereof interest upon such rates shall be chargeable and recoverable by the local authority at the rate of one per cent. for every month or portion of a month for which the rate remains unpaid reckoned from the date upon which the rates shall have been fixed to become due and payable.

Recovery of interest on unpaid rates

*22. In case any person liable to pay any rate and who shall be in default as regards payment thereof shall not be resident within the jurisdiction of the court of the resident magistrate of the district it shall be lawful for the local authority at its option to make the demand referred to in section *nineteen* hereof upon or to take proceedings under section *twenty* hereof against any person receiving any rents or profits of the rateable

Proceedings against persons liable for rates.

* See Ordinance No. II (Priv.), 1905, section *thirty-five*, as to Johannesburg Town Council.

property in respect of which such rate is unpaid or who would receive the same if such rateable property were let or occupied.

Proceedings
for recovery
of rates
unpaid for
three
months.

23. When any rate imposed upon any owners of rateable property shall remain unpaid for a period of three months after the date on which such rate shall have been fixed to become due and payable the local authority may at any time within twelve months after the imposing of the rate demand the amount of such rate or any part thereof from any tenant or occupier for the time being of such rateable property and on non-payment thereof may after one month from the date of such demand recover the same from such tenant or occupier in the same manner as though he were the owner. And every such tenant or occupier shall be entitled to deduct from any rent or other amount payable by him to such owner or his successors in title so much as was so paid by or recovered from him and the production of the receipts for such rates so paid by or recovered from such tenant or occupier shall be a good and sufficient discharge for the amount so paid or recovered as payment of rent or other amount.

Evidence.

*24. In any proceedings to impose or recover rates or consequent on the imposing or recovering of any rate as well as in all other proceedings under the provisions of this Ordinance the valuation rolls rate-books and records of the local authority and all entries made therein and extracts or certified copies thereof signed by the chairman or town clerk and also all copies of any newspaper containing any notice necessary to be proved shall upon production thereof alone be *prima facie* evidence of the imposing of such rate and of the contents thereof without any evidence that the notices required by or other requirements of this Ordinance have been complied with. Provided that it shall be competent for any party to any such proceedings to offer evidence to prove the contrary.

Owner liable
for rates.

25. The person who is the owner of any rateable property shall be liable for payment of the amount of the rate due on such property and in the case of joint owners of rateable property they shall be jointly and severally liable for the rate due thereon; provided that in the case of the owner being absent from the Colony the agent or person receiving the rent of such property shall be liable.

No transfer
of property
to be passed
on which
rates are due.

*26. No transfer or cession of any rateable property shall be passed before any Registrar of Deeds or Registrar of Mining Rights or other Government official until a receipt or certificate signed by the town clerk or other person authorized by the council shall be produced to such official for payment of the rates imposed on such property.

* See Ordinance No. II (Priv.), 1905, section *thirty-five*, as to Johannesburg Town Council.

† See, however, Act No. 35, 1909, section *five*.

27. The proceeds of the rate or rates levied under this Ordinance shall be applied for and towards such purposes of the district as the local authority shall from time to time think fit.

Application of rates.

28. This Ordinance shall be cited as the Local Authorities Rating Ordinance 1903.

Title.

SCHEDULE.

OBJECTIONS

Against an entry in the Valuation Roll made up under the provisions of the Local Authorities Rating Ordinance 1903.

Year 190....

To the Valuation Court

of the Municipality (or District) of.....

The following entry has been made in the Valuation Roll of the Municipality (or District) of.....

Here insert the name of the objector and copy of the entry complained of.

I do hereby object to the said entry and ask that:—

The objector will here state what entry he considers should be substituted for the above.

on the following grounds:

The objector will here state the reason why he considers the entry should be altered.

Signature of Objector.

.....day of..... 190....

VALUATION COURT.

Objection by:

.....
.....
.....

Sec.
No.

Decision of Court.

.....day of..... 190....

No. 44 of 1903.]

[Promulgated 17th July, 1903.]

ORDINANCE

FOR THE PREVENTION OF DESTITUTION AND TO MAKE PROVISION FOR THE RELIEF OF WIVES AND FAMILIES DESERTED AND LEFT DESTITUTE.

Assented to 6th July, 1903.

Preamble.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

PART I.

Penalty for neglecting to provide for family.

1. Every person being able wholly or in part to maintain himself or herself or his or her family by work or by other lawful means and wilfully refusing or neglecting so to do by which refusal or neglect he or she or any of his or her family whom he or she may be legally bound to maintain shall have become destitute shall be guilty of an offence and upon conviction thereof before any resident magistrate shall be liable to a fine not exceeding twenty-five pounds or in default of payment thereof to imprisonment with or without hard labour for any period not exceeding three months.

If husband desert wife magistrate may in certain cases issue summons.

2. When any husband unlawfully deserts his wife or leaves her without means of support or when a father deserts any child being under fifteen years of age or leaves it without any adequate means of support if complaint thereof be made on oath to the resident magistrate of the district in which such wife or such child shall respectively reside by the wife or by any reputable person on her behalf or in case of the child by the mother or any reputable person such resident magistrate may issue his summons to such husband or father to show cause why he should not support his wife or child ; and in cases of desertion where such husband or father is absent from this Colony the resident magistrate may direct service of the summons to be made by publication thereof in the *Gazette* or in some newspaper circulating at any place where such magistrate shall have reason to believe that such husband or father resides or is.

A married woman or child shall be deemed to have been deserted within the meaning of this Ordinance when such wife or child is living apart from her husband or father because of repeated assaults or other acts of cruelty or because he is an habitual drunkard or because of his refusal or neglect without sufficient cause to supply such wife or child with food and other necessaries of life when able so to do.

3. (1) Upon the day appointed for the hearing and upon proof of the service of the summons whether the defendant be then present or not such resident magistrate shall inquire into the matter of the complaint; and if he be satisfied that the wife or child as the case may be is in fact without means of support and that the husband or the father is able to maintain her or it or to contribute to her or its maintenance such resident magistrate shall make an order in writing directing him to pay either weekly or monthly at the magistrate's discretion and to such person or in such manner for her or its use as such magistrate may think fit such reasonable sum or allowance as he shall consider proper; and such an order shall have the effect of an ordinary judgment of the said court.

Magistrate may make order for maintenance.

(2) The magistrate by whom an order for payment was made or any other magistrate sitting in his stead shall have power from time to time to vary the order on the application either of the person against whom or in whose favour it was made upon proof that the means of the party against whom it was made have altered in amount since the making of the original order or any subsequent order varying it.

(3) The magistrate may discharge any such order as aforesaid on its being proved to his satisfaction that there are no longer any reasons for the order remaining in force.

4. (1) No order for the payment of any sum by the husband shall be made in favour of a wife who is proved to have committed adultery unless the adultery has been condoned. Any order for payment may be discharged by the magistrate by whom the order was made or by the magistrate sitting in his stead upon proof that the wife has since the making thereof been guilty of adultery.

Order not to be made when wife guilty of adultery.

(2) In case it is held by the magistrate that adultery has been proved the judgment or finding shall not be evidence of the adultery except for the purpose of proceedings under this Ordinance.

5. It shall be competent for any husband or father as the case may be against whom judgment shall have been given during his absence from this Colony within two months after his return to this Colony and having notice of such judgment to take out the summons of the court calling upon the complainant in the original suit or the person for whose benefit the order was made to show cause why the order or authority as aforesaid shall not be cancelled and if upon such re-hearing he shall prove to the satisfaction of the court that he did not absent himself from this Colony for the purpose of avoiding the service of the summons the case shall be re-opened and proceed as if he had appeared upon the original summons.

When case may be re-heard if husband or father return to Colony.

6. All cases tried under this Ordinance may at the discretion of the magistrate be heard in private.

Trial may be private.

Order may be certified and transmitted to other resident magistrate.

7. Any order made by any resident magistrate under this Ordinance may be duly certified without fee by such magistrate under his hand and transmitted to any other resident magistrate in whose district the defendant may at any time or from time to time reside or be and shall on receipt be endorsed by such last-mentioned resident magistrate and shall thereupon be put into force and have such effect as though it had originally been pronounced by him subject always to the provisions of section *five*.

Appeal.

8. Any sentence passed or order made by any resident magistrate in terms of this Ordinance shall be subject to appeal to the Supreme Court.

Sale in execution.

9. The rules of the resident magistrates' courts in regard to any sale in execution of the ordinary process of such courts or in regard to appeals from such courts shall apply *mutatis mutandis* to any sale directed or appeal prosecuted in pursuance of this Ordinance.

Reciprocity with other parts of His Majesty's dominions.

*10. Whenever the Lieutenant-Governor shall be advised that in any other part of His Majesty's dominions there is a law in force recognizing the orders of a resident magistrate under this Ordinance duly certified under his hand and providing for their enforcement against the defendant in the jurisdiction of such other part of His Majesty's dominions it shall be lawful for the Lieutenant-Governor to proclaim corresponding and reciprocal regulations providing for the recognition and enforcement in this Colony of orders made in such other part of His Majesty's dominions under any law similar to this Ordinance.

PART II.

Special provision as to employees of Government.

11. When any person in the service of the Government of this Colony the Central South African Railways or the South African Constabulary has deserted or otherwise left his wife or any of his children in destitute circumstances the following provisions shall apply ;

(1) in any case in which an order enforceable under any of the foregoing provisions of this Ordinance has been made the chief officer of the department in which such person is serving shall on being served with a copy of such order deduct the amount mentioned therein from such person's pay or salary as it becomes due ;

(2) in cases not falling within clause (1) the chief officer of the department in which the person is serving shall on the receipt by him of a duly certified copy of any order decree or judgment made by any court in any part of His Majesty's dominions against such person for the payment by such person of the costs of the maintenance of the wife or of any

* Regulations were made for the recognition, etc., of orders made in Natal by Proc. (Admn.) No. 78, 1903 ; in Cape Colony by Proc. (Admn.) No. 82, 1903 ; in O.R.C. by Proc. (Admn.) No. 12, 1904.

- of the children of such person whether legitimate or illegitimate or the cost of any relief given to such wife or to any of the said children by way of loan deduct from the pay or salary of such person such amount as in the opinion of the said chief officer shall seem reasonable ;
- (3) if it appears to the satisfaction of the chief officer of the department in which any person is serving that such person has without lawful excuse left in destitute circumstances his wife or any of his legitimate children under the age of fifteen years the said chief officer may order in any case not falling under either of the foregoing clauses of this section that such amount as in the opinion of the said chief officer is reasonable may be deducted from the pay or salary of such person and applied to the maintenance of such wife or of any such children in such manner as the said chief officer thinks fit.

12. Chief officer of a department in the last preceding section shall mean the executive head of the department in which the person is serving and shall in the case of the Central South African Railways and South African Constabulary mean the Commissioner of Railways and Inspector-General of the said constabulary respectively. Meaning of chief officer.

13. This Ordinance may be cited as the Deserted Wives and Children Protection Ordinance 1903. Title.

No. 45 of 1903.]

[Promulgated 31st July, 1903.]

ORDINANCE

TO PROVIDE FOR THE REMOVAL TO REFORMATORIES OUTSIDE
THE COLONY OF JUVENILE OFFENDERS AND FOR OTHER
PURPOSES.

Assented to 23rd July, 1903.

WHEREAS it is expedient to provide for the removal to the Cape Colony of juvenile offenders sentenced by competent courts in this Colony to imprisonment or to detention in a reformatory in order that such juvenile offenders may be detained in reformatory institutions in the Cape Colony established under the Reformatory Institutions Acts 1879 and 1892 of such last-mentioned Colony until the expiration of sentence or removal back to this Colony and for the apprenticeship of such offenders in this Colony on their return and prior to the expiration of the sentence ;

And whereas the provisions of the Prisoners' Detention Act 1884 of the Cape Colony have under the powers therein contained been extended and applied to the territory within the boundaries of this Colony ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

Power of
Lieutenant-
Governor to
remove to
Cape Colony
juvenile
offenders
under
sentence in
this Colony.

1. It shall be lawful for the Lieutenant-Governor by warrant under the hand of the Attorney-General to remove any male offender under the age of sixteen years who has been or may hereafter be sentenced by any competent court to imprisonment or to detention in a reformatory to the Cape Colony in order that such offender may be detained in a reformatory institution therein established under the Reformatory Institutions Acts aforesaid until the expiration of his sentence or removal back to this Colony ; provided always that no such warrant shall authorize the removal of such offender for purposes of apprenticeship in Cape Colony.

Custody
during
course of
removal.
Power to
make
regulations
as to removal.
Power to
apprentice
juvenile
offenders
before
expiration
of sentence.

2. Any such offender removed as aforesaid shall be deemed to be in lawful custody during the course of such removal to and from Cape Colony.

3. The Lieutenant-Governor may from time to time make revoke alter or amend regulations providing for the removal from Cape Colony of offenders mentioned in section *one* of this Ordinance.

4. *Repealed by Ordinance No. 6, 1906, section two.*

5. *Repealed by Ordinance No. 6, 1906, section two.*

Period of apprenticeship contract.

6. If any male offender under the age of twenty-one and of the age of sixteen years shall be or shall have been convicted of any offence and sentenced to a term of imprisonment exceeding three months it shall be lawful for the Lieutenant-Governor with the approval of the Chief Justice to direct that such offender shall be apprenticed in this Colony to any useful calling or occupation until he shall have attained the age of twenty-one years or for some shorter period ; provided that such direction shall be given within six weeks after the date of such sentence ; and provided further that no period of apprenticeship under this section shall exceed four years unless the sentence shall be for a longer period. The Attorney-General may on such direction nominate a resident magistrate before whom a contract of apprenticeship under this section shall be executed.

Power to apprentice male offenders over sixteen.

7. It shall be the duty of the resident magistrate before whom any contract of apprenticeship under this Ordinance may be executed to inquire as to the fitness of any proposed master and the said magistrate may notify by advertisement in the *Gazette* and in a newspaper circulating in the district that applications for the said contract may be made to him. Such notification shall state the name and age of the offender the offence for which he is undergoing sentence and the date on which applications will be heard.

Duty of magistrate to inquire into fitness of master.

8. Such resident magistrate as aforesaid may in any contract of apprenticeship under this Ordinance provide that such portion of the wages to become due to such apprentice as he shall think fit shall be deposited at such times and in such manner as he shall determine in any post office savings bank of this Colony on account of such apprentice and every such deposit shall be deemed and allowed as a payment to such apprentice but no portion thereof shall be withdrawn by such apprentice without the consent in writing of such resident magistrate until the expiration of the apprenticeship.

Provisions of contract of apprenticeship.

9. In every contract of apprenticeship under section six of this Ordinance it shall be a condition that in case any competent court shall declare the said contract to be cancelled on the ground of the disobedience or other misconduct of the apprentice he shall be liable to be forthwith condemned and ordered by such court to be taken into custody to serve and undergo so much of the original sentence as he shall not at the date of such contract have served or undergone less only as to any period of imprisonment the time during which such contract shall have subsisted.

Cancellation of contract.

10. The records of any acts done or of proceedings before a resident magistrate under the provisions of this Ordinance shall

Resident magistrate shall preserve records.

be by him preserved together with a duplicate of any such contract as is herein mentioned and shall be forwarded when and if required to the Attorney-General.

Title.

11. This Ordinance may be cited as the Juvenile Offenders' Removal and Apprenticeship Ordinance 1903.

No. 46 of 1903.]

[Promulgated 31st July, 1903.]

* ORDINANCE.

Assented to 23rd July, 1903.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. Law No. 11 of 1899 is hereby repealed. Repeal.
2. In this Ordinance unless there is something repugnant in the subject or context : Interpretation of terms.
 - “ house ” includes a dwelling-house building room out-house shed or tent ;
 - “ place ” includes any field enclosure space vehicle or boat ;
 - “ brothel ” includes any house or place kept or used for purposes of prostitution or for persons to visit for unlawful carnal connection or for any other lewd obscene or indecent purpose ;
 - “ police officer ” means any member whatever may be his rank of the Town Police South African Constabulary or any other police force established under the authority of any law in this Colony ;
 - “ owner ” includes any person who lets or permits the occupation of any house or place whether in his own right or that of another ;
 - “ unlawful carnal connection ” means carnal connection otherwise than between husband and wife.
3. Any person who keeps a brothel is liable to imprisonment with hard labour for three years. Keeping a brothel.
4. The following persons are deemed to keep a brothel : Who are deemed keepers of a brothel.
 - (a) any person who appears acts or behaves as the master or mistress or as the person having the care or management thereof whether he or she is or is not the real keeper ;
 - (b) any woman found therein who refuses to disclose the owner or manager thereof ;
 - (c) any male person resident therein (unless he proves that he was ignorant of the character of the house) ;
 - † (d) any person whose wife resides in or manages or assists in the management thereof unless he *bona fide* lives apart from her ;
 - (e) any person who being the owner of a house or place knowingly lets or after receiving such notice as is mentioned in the next succeeding section permits such house or place to be kept or used as a brothel ;

* See Act No. 16, 1908.

† As amended by Act No. 16, 1908, section two.

(f) any person who knowingly receives the whole or any share of any money taken therein.

Effect of notice to the owner.

5. When any house or place is used as a brothel written notice thereof given by a police officer not below the rank of sergeant or by any two householders living in the vicinity of the house or place complained of to the owner thereof shall be conclusive proof of knowledge on the part of the person to whom such notice is given.

Onus of proof.

6. In prosecutions under this Ordinance the onus of proving that a house or place is being kept or used as a brothel to the knowledge of the owner shall be on the prosecution; provided that if it be established to the satisfaction of the court that having regard to the locality and accommodation the rent paid for the house or place is excessive or exorbitant the onus shall be on the accused to prove that he was ignorant that such house or place was kept or used as a brothel.

Contract to let house for a brothel void.

7. Any contract to let any house or place to be kept or used as a brothel shall be null and void and no action or other legal proceedings for or in respect of rent shall be maintained in respect of such contract.

Contract to let house void if used as a brothel.

8. Any contract to let any house or place which subsequently to the making of such contract becomes a brothel shall upon the date of such event be determined and become null and void; provided that upon proof by the owner of his ignorance that the house or place was so kept or used he shall be entitled to recover the rent up to the date upon which he became aware that the house or place was being kept or used as a brothel.

Summary ejection when the house is kept as a brothel.

9. The owner of any house or place used wholly or in part as a brothel shall be entitled to apply to the magistrate of the district in which such house or place is situate for the summary ejection of any person who may be keeping or using such house or place or any part thereof as a brothel and such magistrate shall be entitled after inquiry to order the summary ejection of such person.

Proceedings when householders complain that a house is used as a brothel.

10. On the receipt of complaints from not less than two householders of good repute that any house or place in the vicinity of the dwellings of such householders is being kept or used as a brothel the magistrate may require them to attend before him in his office and there declare on oath that the contents of their respective complaints are true and to enter into recognizances in such sum as the magistrate shall deem reasonable having regard to their pecuniary circumstances to produce material evidence in support of such complaints or upon a similar complaint upon oath being laid before him by any police officer not below the rank of sergeant the magistrate may issue his warrant for the arrest of the person appearing to be the keeper of such brothel to be dealt with according to law.

11. A magistrate who has

(a) received the complaints administered the oaths and taken the recognizances in accordance with the provisions of the last preceding section ; or

(b) has had laid before him satisfactory information on oath by any police officer not below the rank of sergeant that any house or place is being kept or used as a brothel ;

Magistrate may authorise search of house suspected of being a brothel.

may instead of issuing his warrant for arrest as in the last preceding section provided issue a warrant authorizing any police officer not below the rank of sergeant to enter at any time and within such period as shall be limited in such warrant such house or place for the purpose of ascertaining the name and identity of the keeper thereof and for such purpose to demand search for and seize any account book receipt paper document or thing found in such house or place likely to afford the information sought for. Such officer may also demand the name and address of any person found therein and any person refusing or failing to give his name or address or giving a name or address false in any material particular or refusing to disclose the name or identity of the keeper of such house or place or to produce any such book receipt paper document or thing may be arrested without warrant and shall be liable to a fine of seventy-five pounds and in default of payment to imprisonment with hard labour for six months.

No prosecution or conviction under this section shall be a bar to any criminal proceedings under any other section of this Ordinance.

The issue of a warrant under this section shall not in any way affect the power of the magistrate to issue at any time a warrant under the last preceding section or under any other law.

12. Any person who being the parent or guardian of any girl or woman

(a) procures such girl or woman to have unlawful carnal connection with any man other than the procurer ; or

(b) orders is party to permits or receives any consideration for the defilement seduction or prostitution of such girl or woman ;

Parent or guardian procuring defilement of ward.

is liable to imprisonment with hard labour for five years and if such girl is under the age of twelve years he is liable to imprisonment with hard labour for life and to be whipped.

The term " guardian " in this section includes any person who has in law or in fact the custody or control of the girl or woman.

13. Any person who

(a) procures or attempts to procure any girl or woman not being a common prostitute or of known immoral character to have unlawful carnal connection either within or without this Colony with any other person or persons ; or

Unlawfully defiling women—procurator.

(b) inveigles or entices any such woman or girl to a brothel for the purpose of unlawful carnal connection or prostitution or knowingly conceals in any such house any such woman or girl so inveigled or enticed ; or

(c) procures or attempts to procure any woman or girl to become either within or without this Colony a common prostitute ; or

(d) procures or attempts to procure any woman or girl to become an inmate of a brothel in this Colony or elsewhere ; or

(e) by threats or intimidation procures or attempts to procure any woman or girl to have any unlawful carnal connection either within or without this Colony ; or

(f) by false pretences or false representations procures or attempts to procure any woman or girl not being a common prostitute or of known immoral character to have any unlawful carnal connection either within or without this Colony ; or

(g) applies administers to or causes to be taken by any woman or girl any drug intoxicating liquor matter or thing with intent to stupefy or overpower her so as thereby to enable any person to have unlawful carnal connection with such woman or girl ;

is when the offence does not amount to rape or attempt to commit rape liable to imprisonment with hard labour for five years.

Conspiracy
to defile.

14. Any person who conspires with any other person to induce any woman or girl by any false pretence or other fraudulent means to allow any man to have unlawful carnal connection with her is where the offence does not amount to rape liable to imprisonment with hard labour for two years.

Householder
permitting
defilement
of girl on
his premises.

15. Any person who being the owner or occupier of any house or place or having or acting or assisting in the management or control thereof induces or knowingly permits any girl of such age as is in this section mentioned to resort to or be in or upon such house or place for the purpose of being unlawfully and carnally known by any man whether a particular man or not shall

(1) if such girl is below the age of twelve years be liable to imprisonment with hard labour for life and whipping ; and

(2) if such girl is of or above the age of twelve years and below the age of sixteen years be liable to imprisonment with hard labour for five years.

Detention in
a brothel.

16. (1) Any person who takes or detains any woman or girl against her will

(a) to or in or upon any premises with intent that she may be unlawfully carnally known by any man whether a particular man or not ; or

(b) to or in a brothel ;

is liable to imprisonment with hard labour for seven years.

(2) Any person shall be deemed to detain a woman or girl under this section who with intent to compel or induce her to

remain in or upon any premises or any brothel withholds from her any wearing apparel or other property to the possession of which she is entitled or which has been lent or supplied to her by such person or for the purposes of prostitution; and the woman or girl is justified in taking away such wearing apparel as is necessary to enable her to leave such premises or brothel.

17. Any person who takes or detains or causes to be taken or detained an unmarried girl under the age of eighteen years out of the custody and against the will of her father or mother or other person having the custody of her with intent that she may be unlawfully carnally known by any man whether a particular man or not is liable to imprisonment with hard labour for five years.

Abduction of girl under eighteen.

*18. (1) If it appears to a magistrate on complaint made on oath by a parent husband relative or guardian of a woman or girl or any other person who in the opinion of the magistrate is acting in good faith in the interest of a woman or girl that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any house or place within his jurisdiction he may issue a warrant directed to a police officer and authorize him to search for such woman or girl and when found to take her to and detain her in a place of safety until she can be brought before a magistrate; and the magistrate before whom she is brought may cause her to be delivered up to her parents husband relatives or guardians or otherwise dealt with as the circumstances may permit and require.

Women detained for immoral purposes.

(2) The magistrate issuing the warrant may by warrant direct any person accused of so unlawfully detaining the woman or girl to be arrested and brought before him or some other magistrate having jurisdiction and may direct proceedings to be taken for punishing him according to law.

(3) A woman or girl is deemed to be unlawfully detained for immoral purposes if she

- (a) being under the age of sixteen years is so detained; or
- (b) being of or over the age of sixteen years and under the age of eighteen years is so detained against her will or against the will of her father or mother or husband or of any other person who has the lawful care or charge of her; or
- (c) being of or above the age of eighteen years is so detained against her will;

and in any such case is detained by any person in order to her being unlawfully carnally known by any man whether a particular man or not.

(4) A person authorized by warrant under this section to search for a woman or girl may enter by force if necessary any house or place specified in the warrant and may remove the woman or girl therefrom.

* See Ordinance No. 1, 1903, section *fifty-three*.

(5) The warrant must be executed by the police officer mentioned in it who must unless the magistrate otherwise directs be accompanied by the parent husband relative guardian or other person by whom the complaint is made if such person so desired.

White woman
having con-
nection with
natives.

* 19 (1) *Any white woman who voluntarily permits or who incites, solicits, or importunes any native to have unlawful carnal connection with her, shall be guilty of an offence, and liable on conviction to imprisonment with hard labour for a period not exceeding five years.*

* (2) *Any native having or attempting to have unlawful carnal connection with a white woman in circumstances which do not amount to rape, and any native who entices, solicits, or importunes any white woman to have unlawful carnal connection with him, or to the commission of immoral or indecent acts, shall be guilty of an offence and liable on conviction to imprisonment with hard labour for a period not exceeding six years, and in addition to such imprisonment, to whipping not exceeding twenty-four strokes.*

(3) Any person who procures or attempts to procure any white woman for the purpose of having unlawful carnal connection with any native shall be liable to imprisonment with hard labour for ten years and when the offender is a male to whipping not exceeding twenty-four strokes in addition to such imprisonment.

(4) The owner or occupier of any house or place who knowingly permits unlawful carnal connection in contravention of the provisions of this section to take place therein shall in addition to any other penalties imposed by this Ordinance be liable to imprisonment with hard labour for five years.

(5) For the purposes of this section the expression "native" means a person manifestly belonging to any of the native or coloured races of Africa Asia America or St. Helena.

Enticing to
commission
of immoral
acts.

† 20. *Any person who*

(a) *entices, solicits, or importunes in any public place for immoral purposes; or*

(b) *being a person of a notoriously immoral character exhibits himself or herself in an indecent dress or manner at any door or window or within view of any public street or place or in any place to which the public have access;*

shall be guilty of an offence and liable on conviction to imprisonment with hard labour for a period not exceeding two years.

Male person
living on
earnings of
prostitution.

‡ 21. (1) *Every male person who*

(a) *knowingly lives wholly or in part on the earnings of prostitution; or*

(b) *in public or in private aids or is a party to the commission by any male person of any act of gross indecency with another male person;*

* Sub-sections (1) and (2) substituted by Act No. 16, 1908, section three.

† This section substituted by Act No. 16, 1908, section four.

‡ Sub-section (1) substituted by Act No. 16, 1908, section five.

shall be guilty of an offence and liable on conviction to imprisonment with hard labour for a period not exceeding three years, and to whipping not exceeding twenty-four strokes in addition to such imprisonment.

(2) If it is made to appear to a magistrate by information on oath that there is reason to suspect that any house or any part of a house is used by a female for purposes of prostitution and that any male person residing in or frequenting the house is living wholly or in part on the earnings of the prostitute the magistrate may issue a warrant authorising any constable to enter and search the house and to arrest that male person.

(3) When a male person is proved to reside in a brothel or to live with or to be habitually in the company of a prostitute and has no visible means of subsistence he shall unless he can satisfy the magistrate to the contrary be deemed to be knowingly living on the earnings of prostitution.

22. Upon a charge of any of the offences defined in this Ordinance the husband or wife of an accused person is a competent but not a compellable witness. Rule of evidence.

23. Whenever the age of any child is in question if the court or jury on their own view and judgment shall be satisfied that a child is under a certain age such child shall be deemed to be under that age unless the contrary be proved. Determination of age.

24. This Ordinance may be cited as The Immorality Ordinance 1903 and shall take effect on and after the first day of August 1903. Title.

No. 47 of 1903.]

[Promulgated 31st July, 1903.]

ORDINANCE

TO MAKE PROVISION AGAINST FRAUDULENT MARKS
ON MERCHANDISE.

Assented to 23rd July, 1903.

WHEREAS it is expedient to make provision against fraudulent marks on merchandise ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

Offences as
to trade
marks and
trade
descriptions.

1. (1) Every person who

(a) forges any trade mark ; or

(b) falsely applies to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive ;
or

(c) makes any die block machine or other instrument for the purpose of forging or of being used for forging a trade mark ;
or

(d) applies any false trade description to goods ; or

(e) disposes of or has in his possession any die block machine or other instrument for the purpose of forging a trade mark ;
or

(f) manufactures imports or has in his possession any labels for the purpose of applying them contrary to the provisions of this Ordinance ; or

(g) causes any of the things above in this section mentioned to be done ;

shall subject to the provisions of this Ordinance and unless he proves that he acted without intent to defraud be guilty of an offence against this Ordinance.

(2) Every person who sells or exposes for or has in his possession for sale or any purpose of trade or manufacture any goods or things to which any forged trade mark or false trade description is applied or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied as the case may be shall unless he proves ;

(a) that having taken all reasonable precautions against committing an offence against this Ordinance he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade description ; and

(b) that on demand made by or on behalf of the complainant he gave all the information in his power with respect to the* persons from whom he obtained such goods or things; or

(c) that otherwise he had acted innocently;
be guilty of an offence against this Ordinance.

(3) Every person guilty of an offence against this Ordinance shall be liable on conviction

(a) to a fine not exceeding two hundred pounds or to imprisonment with or without hard labour for any period not exceeding two years or to both such fine and such imprisonment; and
(b) to forfeiture at the discretion of the court of every article instrument or thing by means of or in relation to which the offence has been committed.

2. (1) For the purposes of this Ordinance;

Definitions.

The expression "trade mark" means a trade mark registered in the register of trade marks kept under Law No. 6 of 1892 or the Trade Marks Registration Proclamation 1902 and includes any trade mark which either with or without registration is protected by law in the United Kingdom or in any British Colony or Possession or Foreign State to which the provisions of the *one hundred and third* section of the Patents Designs and Trade Marks Act 1883 enacted by the Imperial Parliament are under Order-in-Council for the time being applicable. The said section is set forth in a schedule to this Ordinance.

The expression "trade description" means any description statement or other indication direct or indirect

(a) as to the number quantity measure gauge or weight of any goods; or

(b) as to the place or country in which any goods were made or produced; or

(c) as to the mode of manufacturing or producing any goods; or

(d) as to the material of which any goods are composed; or

(e) as to any goods being the subject of an existing patent privilege or copyright;

and the use of any figure word or mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Ordinance.

The expression "false trade description" means a trade description which is false in a material respect as regards the goods to which it is applied and includes every alteration of a trade description whether by way of addition effacement or otherwise where that alteration makes

* As in *Gazette*.

the description false in a material respect and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Ordinance.

The expression "goods" means anything which is the subject of trade manufacture or merchandise.

The expressions "person" "manufacturer dealer or trader" and "proprietor" include any body of persons corporate or *unincorporate.

The expression "name" includes any abbreviation of a name.

(2) The provisions of this Ordinance respecting the application of a false trade description to goods shall extend to the application to goods of any such figures words or marks or arrangement or combination thereof whether including a trade mark or not as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3) The provisions of this Ordinance respecting the application of a false trade description to goods or respecting goods to which a false trade description is applied shall extend to the application to goods of any false name or initials of a person and to goods with the false name or initials of a person applied in like manner as if such name or initials were a trade description and for the purpose of this enactment the expression false name or initials means as applied to any goods any name or initials of a person which

(a) are not a trade mark or part of a trade mark; and

(b) are identical with or a colourable imitation of the name or initials of a person carrying on business in connection with goods of the same description and not having authorized the use of such name or initials; and

(c) are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods.

3. A person shall be deemed to forge a trade mark who either

(a) without the assent of the proprietor of the trade mark makes that trade mark or a mark so nearly resembling that trade mark as to be calculated to deceive; or

(b) falsifies any genuine trade mark whether by alteration addition effacement or otherwise;

and any trade mark or mark so made or falsified is in this Ordinance referred to as a forged trade mark; provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the accused.

* As in *Gazette*; in Ordinance 1903 the word "incorporate" is given.

4. (1) A person shall be deemed to apply a trade mark or mark or trade description to goods who

Applying
marks and
descriptions.

(a) applies it to goods themselves; or

(b) applies it to any covering label reel or other thing in or with which the goods are sold or exposed or had in possession for any purpose of sale trade or manufacture; or

(c) places encloses or annexes any goods which are sold or exposed or had in possession for any purpose of sale trade or manufacture in with or to any covering label reel or other thing to which a trade mark or trade description has been applied; or

(d) uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.

(2) The expression "covering" includes any stopper cask bottle vessel box cover capsule case frame or wrapper; and the expression "label" includes any band or ticket. A trade mark or mark or trade description shall be deemed to be applied whether it is woven impressed or otherwise worked into or annexed or affixed to the goods or to any covering label reel or other thing.

(3) A person shall be deemed to falsely apply to goods a trade mark or mark who without the assent of the proprietor of a trade mark applies such trade mark or a mark so nearly resembling it as to be calculated to deceive but in any prosecution for falsely applying a trade mark or mark to goods the burden of proving the assent of the proprietor shall lie on the accused.

5. Where a person is charged with making any die block machine or other instrument for the purpose of forging or being used for forging a trade mark or with falsely applying to goods any trade mark or any mark so nearly resembling a trade mark as to be calculated to deceive or with applying to goods any false trade description or causing any of the things in this section mentioned to be done and proves

Exemption
of certain
persons
employed in
ordinary
course of
business.

(a) that in the ordinary course of his business he is employed on behalf of other persons to make dies blocks machines or other instruments for making or being used in making trade marks or as the case may be to apply marks or descriptions to goods and that in the case which is the subject of the charge he was so employed by some person resident in this Colony and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and

(b) that he took reasonable precautions against committing the offence charged; and

(c) that he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade mark or trade description; and

(d) that he gave to the complainant all the information in his power with respect to the persons on whose behalf the die block machine or other instrument was made or the trade mark mark or description was applied ;

shall be discharged from the prosecution but shall be liable to pay the costs incurred by the complainant unless he has given due notice to him that he will rely on the above defence.

Application
of Ordinance
to watches.

6. Where a watch case has thereon any words or marks which constitute or are by common repute considered as constituting a description of the country in which the watch was made and the watch bears no description of the country where it was made those words or marks shall *prima facie* be deemed to be a description of that country within the meaning of this Ordinance and the provisions of this Ordinance with respect to goods to which a false trade description has been applied and with respect to selling or exposing for or having in possession for sale or any purpose of trade or manufacture goods with a false trade description shall apply accordingly and for the purposes of this section the expression " watch " means all that portion of a watch which is not the watch case.

Trademark
how
described in
pleading.

7. In any indictment charge pleading proceeding or document in which any trade mark or forged trade mark is intended to be mentioned it shall be sufficient without further description and without any copy or facsimile to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

Rules as to
evidence.

8. In any prosecution for an offence against this Ordinance evidence of the port of shipment of imported goods shall be *prima facie* evidence of the place or country in which the goods were made or produced.

Punishment
of accessories.

9. Any person who being within this Colony procures counsels aids abets or is accessory to the commission without this Colony of any act which if committed in this Colony would under this Ordinance be an offence shall be guilty of that offence as a principal and be liable to be indicted proceeded against tried and convicted in any place in this Colony in which he may be as if the offence had been there committed.

Search
warrant.

10. (1) Where upon information of an offence against this Ordinance there has been issued in due form of law either a summons requiring the person charged by such information to appear to a answer to the same or a warrant for the arrest of such person and either the person issuing such summons or warrant or any other officer of the law empowered to issue criminal process is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the person charged or arrested or otherwise in his possession or under his control in any place the person issuing such summons

or warrant or other such officer as aforesaid as the case may be may issue a warrant under his hand by virtue of which it shall be lawful for any police officer named or referred to in the warrant to enter such house premises or place at any reasonable time by day and to search there for and seize and take away those goods or things ; and any goods or things seized under any such warrant shall be brought before the court of the resident magistrate having jurisdiction in respect of such offence for the purpose of its being determined whether the same are or are not liable to forfeiture under this Ordinance.

(2) If the owner of any goods or things which if the owner thereof had been convicted would be liable to forfeiture under this Ordinance is unknown or cannot be found an information or complaint may be laid for the purpose only of enforcing such forfeiture and the resident magistrate of the district in which such goods or things shall be found may cause notice to be advertised in the *Gazette* stating that unless cause is shown to the contrary at the time and place named in the notice such goods or things will be forfeited and at such time and place the resident magistrate unless the owner or any person on his behalf or other person interested in the goods or things show cause to the contrary may order such goods or things or any of them to be forfeited.

(3) Any goods or things forfeited under this section or under* any other provision of this Ordinance may be destroyed or otherwise disposed of in such manner as the court by which the same are forfeited may direct and the court may out of any proceeds which may be realized by the disposition of such goods (all trade marks and trade descriptions being first obliterated) award to any innocent party any loss he may have innocently sustained in dealing with such goods.

11. On any prosecution under this Ordinance the court may order costs to be paid to the accused by the complainant or to the complainant by the accused having regard to the information given by and the conduct of the accused and complainant respectively.

Costs of
defence or
prosecution.

12. No prosecution for an offence against this Ordinance shall be commenced after the expiration of three years next after the commission of the offence or one year next after the first discovery thereof by the complainant whichever expiration first happens.

Limitation of
prosecution.

13. (1) All goods liable to forfeiture under this Ordinance and also all goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer dealer or trader in this Colony unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced are hereby prohibited to be imported into this Colony and if any such goods as aforesaid shall be imported into this Colony contrary to the provisions hereof the same shall be forfeited.

Prohibition on
importation.

* As in *Gazette*.

(2) The words "goods of foreign manufacture" in the last preceding sub-section shall be taken to mean all goods manufactured made or produced at any place outside the limits of this Colony.

(3) Before detaining any such goods or taking any further proceedings with a view to the forfeiture thereof under the law relating to the Customs the officers of Customs may require the regulations under this section whether as to information security conditions or other matters to be complied with and may satisfy themselves in accordance with these regulations that the goods are such as are prohibited by this section to be imported.

* (4) The Lieutenant-Governor may by notice in the *Gazette* from time to time make revoke and vary regulations either general or special respecting the detention and forfeiture of goods the importation of which is prohibited by this section and the conditions if any to be fulfilled before such detention and forfeiture and may by such regulations determine the information notices and security to be given and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence.

(5) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in this Colony that name unless accompanied by the name of the country in which such place is situate shall be treated for the purposes of this section as if it were the name of a place in this Colony.

(6) Such regulations may apply to all goods the importation of which is prohibited by this section or different regulations may be made respecting different classes of such goods or offences in relation to such goods.

(7) The regulations may provide for the informant reimbursing the Director of Customs all expenses and damages incurred in respect of any detention made on his information and of any proceedings consequent on such detention.

Implied
warranty on
sale of
marked
goods.

14. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied or that the trade description is not a false trade description within the meaning of this Ordinance unless the contrary is expressed in some writing signed by or on behalf of the vendor and delivered at the time of the sale or contract to and accepted by the vendee.

Provisions of
Ordinance as
to false
description
not to apply
in certain
cases.

15. Where at the promulgation of this Ordinance a trade description is lawfully and generally applied to goods of a particular class or manufactured by a particular method to indicate the particular class or method of manufacture of such goods the provisions of this Ordinance with respect to false trade descriptions:

* For regulations see Govt. Notice No. 993 of 1903 (*Gazette*, 11th September, 1903).

shall not apply to such trade description when so applied; provided that where such trade description includes the name of a place or country and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced and the goods are not actually made or produced in that place or country this section shall not apply unless there is added to the trade description immediately before or after the name of that place or country in an equally conspicuous manner with that name the name of the place or country in which the goods were actually made or produced with a statement that they were made or produced there.

16. (1) The provisions of this Ordinance shall not extend or apply to the following goods: Goods exempted from provisions of Ordinance.

(a) goods imported into this Colony within three months after the taking effect of this Ordinance where the offending trade mark or trade description shall have been applied to such goods or things prior to such importation;

(b) goods or things manufactured prepared or manipulated in this Colony before the promulgation of this Ordinance where the offending trade mark or trade description shall have been applied prior to such promulgation; provided always that the onus of proof as to the time of importation manufacture preparation or manipulation and as to the date of application of the offending trade mark or trade description shall lie on the importer or owner of the goods or things.

(2) It shall be lawful for the Lieutenant-Governor by Proclamation in the *Gazette* at the request of the Government of any other Colony or territory to exempt under such regulations as he may approve of any goods or things imported directly into such Colony or territory while in transit through this Colony; provided that goods or things so exempted shall in case of reimportation into this Colony become subject to the provisions of this Ordinance.

17. (1) This Ordinance shall not exempt any person from any action suit or other proceeding which might but for the provisions of this Ordinance be brought against him. Savings.

(2) Nothing in this Ordinance shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any action but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Ordinance.

(3) Nothing in this Ordinance shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in this Colony who *bona fide* acts in obedience to instructions of such master and on demand made by or on behalf of the prosecutor has given full information as to his master.

Penalty for
falsely
representing
that goods
are made
under Royal
Warrant.

18. Any person who falsely represents that any goods are made by a person holding a royal warrant or for the service of His Majesty or any of the Royal Family or of the Governor-Lieutenant-Governor or any Government Department shall be liable on summary conviction to a penalty not exceeding twenty pounds.

Title.

19. This Ordinance may be cited as the Merchandise Marks Ordinance 1903.

SCHEDULE

TO THE MERCHANDISE MARKS ORDINANCE 1903.

Being the One Hundred and Third Section of Patents Designs and Trade Marks Act 1883 (Imperial Parliament).

If His Majesty is pleased to make any arrangement with the Government or Governments of any foreign state or states for mutual protection of inventions, designs and trade marks or any of them then any person who has applied for protection for any invention design or trade mark in any such state shall be entitled to a patent for his invention or to registration of his design or trade mark (as the case may be) under this Act in priority to other applicants; and such patent or registration shall have the same date as the date of the protection obtained in such foreign state; provided that his application is made in the case of a patent within seven months and in the case of a design or trade mark within four months from his applying for protection in the foreign state with which the arrangement is in force; provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification or the actual registration of his design or trade mark in this country as the case may be.

The publication in the United Kingdom or the Isle of Man during the respective periods aforesaid of any description of the invention or the use therein during such periods of the invention or the exhibition or use therein during such periods of the design or the publication therein during such periods of a description or representation of the design or the use therein during such periods of the trade mark shall not invalidate the patent which may be granted for the invention or the registration of the design or trade mark.

The application for the grant of a patent or the registration of a design or the registration of a trade mark under this section must be made in the same manner as an ordinary application under this Act; provided that in the case of trade marks any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Act:

The provisions of this section shall apply only in the case of those foreign states in respect to which His Majesty shall from time to time by Order-in-Council declare them to be applicable and so long only in the case of each state as the Order-in-Council shall continue in force with respect to that state.

No. 48 of 1903.]

. [Promulgated 31st July, 1903.]

ORDINANCE

TO APPLY A SUM OF MONEY FOR THE SERVICE OF THE
YEAR ENDED THE 30TH DAY OF JUNE, 1903.

Assented to 23rd July, 1903.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. The public revenue of this Colony is hereby charged towards the service of the year ended the 30th day of June 1903 with a sum of five hundred and seventy-nine thousand two hundred and ten pounds sterling in addition to the sum mentioned in the Appropriation Ordinance 1903.

Public
revenue to be
charged with
£579,210.

2. The money granted by this Ordinance shall be applied to the purposes and services set forth in the schedule annexed hereto.

How to be
applied.

3. The moneys granted by this Ordinance shall not be issued or applied to any use intent or purpose other than the particular services to which the said amounts have been granted respectively by this Ordinance.

Not to be
applied
otherwise
than as
granted.

4. The Colonial Treasurer being duly authorized thereto by warrant under the hand of the Lieutenant-Governor shall issue and pay from time to time such sums of money as shall be required for the purposes hereinbefore mentioned not exceeding in the whole the sums respectively in that behalf specified and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant; and the receipts of the persons to whom such sums shall have been so paid shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given.

The Treasurer
to make
payments
under warrant
of the
Lieutenant-
Governor.

5. This Ordinance may be cited as the Appropriation Ordinance (No. 2) 1903.

Title.

SCHEDULE.

Head of Service.	Amount.
Interest on Public Debt	£15,000
Pensions and Gratuities	500
Adjustment of deficiency on Orphan Chamber Account of late Government	216,500
Restoration of Places of Religious Worship destroyed during late war	20,000
Public Works	273,790
Government Printing Works	9,118
Grants-in-aid	10,000
Commissions	4,531
Irrigation and Water Supply	6,900
Special payments in respect of liabilities of late Government ..	22,871
TOTAL	£579,210

No. 51 of 1903.]

[Promulgated 31st July, 1903.]

ORDINANCE

TO IMPOSE LIABILITIES UPON THE CROWN IN REGARD TO THE
ACTS OF ITS SERVANTS.

Assented to 27th July, 1903.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

Claims against the Crown cognizable in any competent court.

*1. Any claim against His Majesty in His Colonial Government which would if such claim had arisen against a subject be the ground of an action in any competent court shall be cognizable by the said court whether such claim shall arise or have arisen out of any contract lawfully entered into on behalf of the Crown or out of any wrong committed by any servant of the Crown acting in his capacity and within the scope of his authority as such servant ; provided that nothing herein contained shall be taken to impose any liability upon the Crown for any acts or omissions of its servants in the postal or telegraph services of this Colony other than is imposed by any law specially relating to such services.

Action to be laid against Attorney-General.

2. In any action or other proceedings which shall be instituted by virtue of the last preceding section it shall be competent for the plaintiff applicant or petitioner as the case may be to make the Attorney-General nominal defendant or respondent.

No execution or attachment to be issued but Colonial Treasurer authorized to pay the sum awarded.

3. No execution or attachment or process in the nature thereof shall be issued against the defendant or respondent in such suit as aforesaid or against any property of His Majesty but it shall be lawful for the Colonial Treasurer to pay out of the Colonial funds such sum of money as shall by the judgment of the court be awarded to the plaintiff applicant or petitioner.

Title.

4. This Ordinance may be cited as the Crown Liabilities Ordinance 1903.

* As amended by Act No. 13, 1908, section *one*.

No. 52 of 1903.]

[Promulgated 31st July, 1903.]

ORDINANCE

EMPOWERING THE LIEUTENANT-GOVERNOR TO APPOINT A COMMISSION TO REPORT AS TO THE OWNERSHIP OF MINING RIGHTS AND STANDS IN THE DISTRICT FORMERLY KNOWN AS THE MALMANI GOLD FIELDS.

Assented to 27th July, 1903.

WHEREAS many books and documents relating to mining rights and stands in the former Malmani Gold Fields have been lost or destroyed during the recent hostilities ;

And whereas it is necessary that provision should be made for ascertaining who are the holders of such mining rights and stands and the liabilities of the holders in respect of such mining rights and stands ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. It shall be lawful for the Lieutenant-Governor to appoint a commission of three members who shall inquire into all matters relating to the ownership of all mining rights and stands in the district formerly known as the Malmani Gold Fields and shall frame a report showing the names of all holders of such mining rights and stands and the amount of licence moneys due to the Government or to any person or persons in respect of such mining rights and stands and the amount of any bond or other security registered against any such mining rights or stands.

Lieutenant-Governor may appoint a commission.

2. The report shall be signed by the members of the commission or any two of them and shall be forwarded to the Lieutenant-Governor who shall cause a copy of the report to be published in the *Gazette* together with a notice that if no objections to such report are lodged with the Registrar of Mining Rights within one month after the date of the first publication in the *Gazette* the report shall be confirmed by the Lieutenant-Governor.*

Report to be forwarded to Lieutenant-Governor.

3. Any person who objects to the report or to any portion thereof may within one month after the first publication thereof in the *Gazette* lodge with the Registrar of Mining Rights at Johannesburg a notice of such objection specifying that portion of the report to which such objection refers and shall within fourteen days after lodging such notice proceed with such objection by applying on motion to the Supreme Court or if the said court be not

Hearing of objections.

* For report of Commission see Government Notices Nos. 85 of 1904 (*Gazette*, 22nd January, 1904), 101 of 1904 (*Gazette*, 29th January, 1904), 653 of 1904 (*Gazette*, 29th April, 1904).

sitting to any judge thereof for an order to amend the report in terms of the said objection ; the court may before hearing such application cause such notice thereof to be given by the applicant as the said court may deem advisable.

Confirmation
of report.

4. If no objection to the report be lodged as provided by the last preceding section or if any objection be lodged but not proceeded with as provided by the said section the report shall be confirmed by the Lieutenant-Governor at the expiration of two months from the first publication thereof in the *Gazette* ; if any objection be lodged and proceeded with as provided by the said section only such part of the report as is not affected by such objection shall then be confirmed by the Lieutenant-Governor and the remainder of the report either as originally published or amended as the case may be shall be confirmed after any objections thereto have been heard and determined ; the report or amended report or any portion thereof after confirmation by the Lieutenant-Governor shall be taken as being in all respects correct and as containing a true statement of the ownership of such mining rights and stands in the district formerly known as the Malmani Gold Fields and of the amount of licence money due to the Government or to any person or persons in respect of such mining rights and stands and the amount of any bond or other security registered against such mining rights or stands and the Registrar of Mining Rights shall cause registers of mining rights and stands to be drawn up in accordance with the said report as confirmed as aforesaid.

Lieutenant-
Governor
may make
rules for
procedure.

5. The Lieutenant-Governor may from time to time make rules regulating the procedure of the said commission.

Title.

6. This Ordinance may be cited for all purposes as the Malmani Gold Fields Commission Ordinance 1903.

No. 53 of 1903.]

[Promulgated 31st July, 1903.]

ORDINANCE

TO PROVIDE FOR THE CANCELLATION OF THE CONCESSION FOR THE
MANUFACTURE OF SPIRITUOUS LIQUORS VESTED IN THE
EERSTE FABRIEKEN HATHERLEY DISTILLERY COMPANY
LIMITED.

Assented to 27th July, 1903.

WHEREAS a concession was granted on the twenty-second day of June one thousand eight hundred and eighty-five to one Alois Hugo Nellmapius conferring upon him the exclusive right to distil or manufacture within the South African Republic spirituous liquors ; Preamble.

And whereas the rights and privileges under the said concession became vested by cession in the Eerste Fabrieken Hatherley Distillery Company Limited ;

And whereas it is expedient that the said concession and all rights and privileges thereunder should be cancelled ;

And whereas an agreement was entered into on the first day of July one thousand nine hundred and three between the Government of this Colony and the said company for the cancellation of the said concession in consideration of the payment by the said Government to the said company of the sum of two hundred and ninety-six thousand eight hundred and seventy-five pounds ;

And whereas it is expedient to ratify the said contract and cancel the said concession ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. The agreement entered into on the first day of July one thousand nine hundred and three between the Government of this Colony and the Eerste Fabrieken Hatherley Distillery Company Limited and set out in the schedule to this Ordinance is hereby ratified confirmed and declared to be binding on the parties thereto and it shall be lawful for the Lieutenant-Governor to pay to the said company the sum mentioned in the said agreement to wit two hundred and ninety-six thousand eight hundred and seventy-five pounds out of balances in the hands of the Colonial Treasurer. Ratification
of contract.

2. The concession granted to Alois Hugo Nellmapius numbered 83 and dated the twenty-second day of June one thousand eight hundred and eighty-five and all the rights and privileges thereunder are hereby cancelled. Cancellation
of concession

3. This Ordinance may be cited as the Hatherley Distillery (Cancellation of Concession) Ordinance 1903. Title.

SCHEDULE.

Memorandum of Agreement made and entered into by and between the Government of the Transvaal Colony (hereinafter called "the Government") of the one part and the Eerste Fabrieken Hatherley Distillery Limited (hereinafter called "the Company") of the other part;

Witnesseth :

1. The Company is a Company with limited liability duly registered as such in the late South African Republic now the Transvaal Colony.

2. The Company has an issued share capital of £475,000 (say four hundred and seventy-five thousand pounds sterling) consisting of 475,000 (say four hundred and seventy-five thousand) shares of the nominal or face value of £1 sterling (say one pound sterling) each.

3. The Company is the holder of certain Deed of Concession for the distillation manufacture and sale of spirituous and other liquors and of the rights thereunder originally granted by the Government of the South African Republic to one Alois Hugo Nellmapius now deceased and subsequently ceded and transferred to the Company for good and valuable consideration.

4. The said deed of concession is numbered No. 83 is dated the twenty-second day of June 1885 is duly registered in the Deeds Register in the Office of the Registrar of Deeds at Pretoria Folio 91 and was granted in virtue of a Resolution of the Volksraad of the said late South African Republic No. 464 dated the seventeenth day of June 1885.

5. The rights and privileges held and enjoyed by the Company under and by virtue of the said deed of concession are in the same more fully set forth.

6. That certain legislation has recently been promulgated by the Government whereby the distillation within the Transvaal Colony of spirits or spirituous liquors for sale has been prohibited and it is claimed by the Government that thus the rights of the Company held under the aforesaid concession have been abrogated and destroyed but the Government has admitted that the Company is entitled to compensation.

7. That certain negotiations have taken place between the Company and the Government in regard to the measure of such compensation and the rights and privileges attaching thereto and to be held and enjoyed by the Company and upon which the Company would acquiesce in such abrogation and destruction of its rights and privileges and would not question or challenge the same.

8. A provisional agreement setting forth the measure of such compensation and the further rights and privileges to be enjoyed by the Company has been arrived at between the Company and the Government. The terms of the said agreement are more fully set forth in certain letters which have been exchanged between the Company and the Government. The shareholders of the Company have in Special General Meeting called for that purpose in terms of the Company's Trust Deed and Articles of Association and held at Pretoria on Friday the 1st day of May 1903 duly accepted the said terms and it is now desirable that the same shall be duly embodied and set forth in an agreement between the Company and the Government.

9. The said terms are as follows :

(a) As compensation the Government shall pay to the Company for the benefit of its shareholders a sum of 12s. 6d. sterling (say twelve shillings and sixpence sterling) on each of the 475,000 (say four hundred and seventy-five thousand) issued shares of the Company making a sum of £296,875 sterling (say two hundred and ninety-six thousand eight hundred and seventy-five pounds sterling) in cash.

(b) The said sum shall on the signing hereof be paid to the Company as follows:—£76,875 (say seventy-six thousand eight hundred and seventy-five pounds sterling) at its office at Pretoria and £220,000 sterling (say two hundred and twenty thousand pounds sterling) at its office in London in gold at par and free from any deduction.

(c) In consideration of the said payment and of the granting to and enjoyment by the Company of the rights and privileges hereinafter set forth the Company agrees to acquiesce in the cancellation of the said deed of concession and of the rights and privileges held and enjoyed thereunder.

(d) That all and singular the other properties and assets of the Company of whatsoever nature shall be held and retained by the Company for the benefit of the Shareholders thereof.

- (e) That for a full term or period of three years from the day of signing of this agreement the Company shall have the right to sell and dispose of its stock of spirits and other liquors under the special privileges in this deed more fully set forth and that the Company shall not during the said period and in respect of such sale and disposal be subject to the payment of any tax excise licence or any other charge whatsoever in respect of its said stock.
- (f) That the Company shall have the right to import to the Transvaal from the Ressano-Garcia Distillery in the Province of Mozambique and free from the payment of any tax excise licence or other charge so far as the Government is concerned the stock of spirits distilled and now actually stored there such spirits not to exceed a total quantity of 20,000 (say twenty thousand) imperial gallons in bulk.

For the due performance whereof the parties to this agreement bind themselves according to law.

Thus done and signed at Pretoria in the Transvaal Colony in duplicate original on this the first day of July 1903 in the presence of the undersigned witnesses.

(Sgd.) W. E. DAVIDSON,
Colonial Secretary.

As Witnesses :

(Sgd.) E. H. L. GORGES.
" H. J. BARKER.

For the Government of the Transvaal Colony.

(Sgd.) H. CRAWFORD,
" FRANCIS DRAKE,

As Witnesses :

(Sgd.) C. ALTMAN.
" JOHN SMITH.

For the Eerste Fabrieken Hatherley Distillery Limited (now in Liquidation).

No. 55 of 1903.]

[Promulgated 31st July, 1903.]

* ORDINANCE

TO PROVIDE FOR THE ADMISSION OF LAND SURVEYORS.

Assented to 27th July, 1903.

WHEREAS it is desirable to make provisions for the admission of persons desiring to practise as land surveyors in this Colony;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:

Repeal.

1. Proclamation Transvaal No. 4 of 1902 and so much of any other law as is repugnant to or inconsistent with the provisions of this Ordinance are hereby repealed.

Examina-
tions
required to
be passed by
candidate for
admission as
land
surveyor.

2. No person shall be admitted to practise as a land surveyor in this Colony until he has attained the age of twenty-one years and has worked in the field for a period of not less than two years with a qualified Government Surveyor and has passed

†(a) in this Colony such examination or examinations as may be prescribed by the board of examiners of this Colony and approved by the Lieutenant-Governor in Council; or

(b) in some other part of His Majesty's Dominion such examination or examinations as the board of examiners of this Colony with the approval of the Lieutenant-Governor in Council may deem to be equivalent to the examination or examinations prescribed under sub-section (a) of this section. If the examination or examinations passed elsewhere shall be deemed to be equivalent in part only to the examination or examinations prescribed under sub-section (a) of this section the applicant shall be required to pass such supplementary examination or examinations as the board of examiners may prescribe; provided however that after a date to be fixed by the Lieutenant-Governor no person shall be entitled to the benefit of this sub-section unless by the laws of the place where he passed his examination or examinations a similar privilege is conferred upon persons who have passed the examination or examinations for the time being prescribed for land surveyors in this Colony; and

(c) in addition to such examination or examinations prescribed in sub-sections (a) or (b) such practical examination in the methods and procedure of surveying and in the land laws of this Colony as the Surveyor-General shall prescribe.

Regulations.

‡3. It shall be lawful for the Lieutenant-Governor to make such regulations as he may deem necessary for the better carrying out of the provisions of this Ordinance.

Title.

4. This Ordinance may be cited as the Land Surveyors Admission Ordinance 1903.

* For Board of Examiners, see Ordinance No. 8, 1904.

† For examinations prescribed, see Govt. Notice No. 648 of 1904 (*Gazette*, 29th April, 1904).

‡ For regulations *re* admission, see Notice No. 536 of 1904 (*Gazette*, 14th October, 1904).

No. 57 of 1903.]

[Promulgated 31st July, 1903.]

* ORDINANCE.

Assented to 27th July, 1903.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. The laws mentioned in the schedule annexed hereto and so much of any other law as is repugnant to or inconsistent with the provisions of this Ordinance are hereby repealed. Repeal.

2. In this Ordinance if not inconsistent with the context the following terms shall have the meanings assigned to them respectively : Interpretation.

“Commissioner” when used alone means the Commissioner of Lands appointed under this Ordinance ;

“Crown land” means and includes :

(a) all unalienated Crown lands ;

(b) all land the property of the Government however acquired ;

“Land Board” or “board” means when used alone the board appointed by the Lieutenant-Governor to advise the Commissioner of Lands.

3. There shall be a Commissioner of Lands charged with the administration of this Ordinance and with the management and control of the Department of Lands and Surveys and the Commissioner of Lands in office at the commencement of this Ordinance shall be the first Commissioner under this Ordinance. The work of the department shall be performed by such staff of officers surveyors inspectors rangers clerks and servants as may be necessary who shall be appointed by the Lieutenant-Governor and shall receive such remuneration as the Lieutenant-Governor may think fit and the members of the present staff of the said department shall be deemed to be appointed under this Ordinance. Commissioner of Lands and Department of Lands and Surveys.

4. It shall be lawful for the Lieutenant-Governor to appoint a land board to advise the Commissioner and perform such other duties as he may by regulation prescribe. Land Board.

5. It shall be lawful for the Lieutenant-Governor to dispose of Crown lands within this Colony by grant sale lease or otherwise in such manner and on such conditions as he may deem advisable not repugnant to the provisions of this Ordinance ; provided that particulars of every such grant sale or lease shall immediately after it is effected be published in the *Gazette*. Crown lands may be disposed of according to provisions of this Ordinance.

* See Ordinance No. 13 of 1906 ; Act No. 34, 1908, section *fifty-five* (6), re issue of deeds of grant ; see also Act No. 26, 1909, section *eight*.

Land may be exchanged.

6. The Lieutenant-Governor may grant any Crown land in exchange for any other land if it shall appear to him advisable to do so in the public interests.

Reservations.

7. (1) All rights to minerals mineral products and precious stones on or under any Crown lands granted sold leased or otherwise disposed of under this Ordinance *may** be reserved to the Crown.

(2) Where the minerals and precious stones are so reserved the Lieutenant-Governor shall have the right

- (a) to dispose of all minerals and precious stones on or under the land so alienated as if the grant or lease had not been made ; provided that any person who causes any damage to a grantee or lessee by the exercise of rights granted to him under any law relating to minerals and precious stones shall be liable for such damage to the grantee or lessee ; and provided further that no licence granted under any law relating to minerals and precious stones shall entitle the holder thereof to prospect or mine upon any cultivated land plantation or homestead or within two hundred yards of any building ;
 (b) to resume for mining purposes the whole or any portion of land so alienated.

(3) The Lieutenant-Governor shall have the right to resume for public purposes the whole or any portion of any land alienated under this Ordinance.

(4) On the proclamation as public diggings under Law No. 15 of 1898 or any amendment thereof or as a mine alluvial diggings or mining area under the Precious Stones Ordinance 1903 or any amendment thereof of any land alienated under this Ordinance or on the resumption of such land for mining or public purposes under this section such compensation shall be paid by the Government to the grantee or lessee as may be agreed upon or in default of agreement as may be determined by arbitration in manner provided by the Expropriation of Lands and Arbitration Clauses Proclamation 1902.

Signature and date of Crown grants.

8. All grants and leases of Crown lands shall be signed by the Lieutenant-Governor as well as by the Commissioner of Lands and the Surveyor-General or other officer authorized in that behalf by the Lieutenant-Governor and shall be dated and sealed with the seal of this Colony and such date shall be deemed the date of issue and every grant shall be entered on record in the Department of Lands and Surveys ; provided always that nothing in this or any other section of this Ordinance contained shall in any way repeal or modify the provisions of any existing law in respect of the registration of such grants and leases in the office of the Registrar of Deeds or in any other registration office proper for the registration of such grants and leases ; save in so far as set forth in †*section nine* of this Ordinance.

* Word in italics substituted by Ordinance No. 13, 1906, section *one*.

† Words in italics substituted by Ordinance No. 4, 1904, section *one*.

9. The Registrar of Deeds shall open and keep special registers wherein all leases and licences issued under the Settlers Ordinance 1902 or under this Ordinance shall be registered and notwithstanding anything contained in the Transfer Duty Proclamation 1902 the Stamp Duties Amendment Proclamation of 1902 the Deeds Proclamation of 1902 Deeds Office Regulations or any amendments of the aforementioned enactments such leases and licences need not be drawn before a notary public nor shall they be subject to transfer duty or stamp duty except in case of subsequent transfer or cession when such transfer or cession shall be in the ordinary form and subject to the duties prescribed by law.

Registrar of Deeds to keep special registers.

In cases where the Crown is not in possession of written title to any land leased the entry in the special register kept in the Deeds Office shall be regarded as effective registration.

On the termination or cancellation of any such lease or licence as above referred to the Commissioner of Lands shall forward to the Registrar of Deeds a notification to that effect duly signed by him and by the lessee or licensee together with the copies of the deeds held by them and the Registrar shall thereupon cancel the registration of such lease or licence without payment of any fee for such cancellation; provided that in cases where the consent of the lessee or licensee to cancellation cannot be obtained a certificate to that effect by the Commissioner and his consent shall be deemed sufficient authority to the Registrar of Deeds to cancel the registration of such lease or licence.

Where one or more lots of land sub-divided according to a general plan filed in the Deeds Office is or are leased by the Commissioner it shall not be necessary to annex a diagram to such lease.

10. If it is found that the description of the boundaries or diagram of the land contained in any grant or lease under this Ordinance does not properly describe the land intended by the grantee or lessee to be therein comprised or to which such grantee or lessee is entitled either by reason of an error in the description or survey or from any other cause the Commissioner may recall such grant or lease and an amended grant or lease may be issued in lieu thereof; provided that the cancellation of the original grant lease or diagram shall take place in accordance with the existing laws relative thereto; provided further that if the grantee or lessee fails to forward on demand to the Commissioner any grant lease diagram or other document for amendment the Commissioner may cause the description and the diagram of the department to be amended if necessary and shall in such case give notice of the amendment to the grantee or lessee and such amended description and diagram or copy thereof if certified by the Surveyor-General or other officer duly authorized in that behalf as correct shall be accepted in every court of law as *prima facie* evidence of the boundaries of the land included under such grant or lease.

On improper description of boundaries or diagram of land granted or leased Commissioner may recall grant or lease and issue amended grant or lease in lieu thereof.

Commissioner may insert special clauses and grant limited right to timber.

11. The Commissioner is authorized at his discretion to insert in any grant or lease all such conditions as he may deem necessary to secure the beneficial occupation of the land granted or leased and also to insert a clause permitting the lessee to cut such timber on Crown lands as may be required for domestic uses for the construction of buildings fences stock-yards or other improvements on the lands so occupied but not for any other purpose.

RESERVES.

Lieutenant-Governor may make reserves.

*12. The Lieutenant-Governor is hereby authorized subject to such conditions and limitations as he may think fit to except from sale and either to reserve to His Majesty His Heirs and Successors or to dispose of in such other manner as for the public interest may seem best any Crown lands that may be required for the following objects and purposes :

- (1) for the use or benefit of aboriginal natives and Asiatics ;
- (2) for the use or requirements of the Government of this Colony or for purposes of military defence or for purposes of the South African Constabulary ;
- (3) for railways railway stations roads tramways or canals or other internal communications or for drainage or irrigation works or for the approaches or other purposes necessarily appertaining to any such works ;
- (4) for landing places on rivers ferries and bridges ;
- (5) for sites for churches and chapels ;
- (6) for sites for schools and other buildings for the purposes of education and land for the endowment of schools and other educational institutions of a public character ;
- (7) for state forests areas for the conservation of timber and indigenous flora and fauna and for reservoirs aqueducts or water-courses sewers or drains ;
- (8) for saltpans ;
- (9) for sites for cities towns villages residence and business areas town halls mechanics' and miners' institutes tramways railways and railway stations telegraph stations telegraph lines post offices abattoirs public baths schools of art libraries museums public gardens experimental farms agricultural colleges agricultural and horticultural societies temperance

* For public reserves see Govt. Notices Nos. 1365, 1903 (*Gazette*, 27/11/03) ; 1418, 1903 (*Gazette*, 11/12/03) ; 1469, 1903 (*Gazette*, 24/12/03) ; 50, 1904 (*Gazette*, 15/1/04) ; 92, 1904 (*Gazette*, 29/1/04) ; 102, 1904 (*Gazette*, 29/1/04) ; 174, 1904 (*Gazette*, 12/2/04) ; 258, 1904 (*Gazette*, 20/6/04) ; 861, 1904 (*Gazette*, 8/7/04) ; 1068 and 1069, 1904 (*Gazette*, 30/9/04) ; 1105, 1904 (*Gazette*, 14/10/04) ; 1120, 1904 (*Gazette*, 21/10/04) ; 1163, 1904 (*Gazette*, 4/11/04) ; 1219, 1904 (*Gazette*, 25/11/04) ; 5, 1905 (*Gazette*, 6/1/05) ; 221, 1905 (*Gazette*, 10/3/05) ; 286, 1905 (*Gazette*, 31/3/05) ; 386, 1905 (*Gazette*, 12/5/05) ; 666, 1905 (*Gazette*, 28/7/05) ; 887, 1905 (*Gazette*, 13/10/05) ; 189, 1906 (*Gazette*, 23/2/06) ; 530, 1906 (*Gazette*, 1/6/06) ; 65, 1907 (*Gazette*, 18/1/07) ; 678, 1907 (*Gazette*, 21/6/07) ; 99 and 100, 1908 (*Gazette*, 31/1/08) ; 1166 and 1169, 1908 (*Gazette*, 20/11/08) ; 1321 and 1323, 1909 (*Gazette*, 26/11/09) ; 594 and 596, 1910 (*Gazette*, 30/5/10).

institutions recreation grounds racecourses hospitals magazines for explosives sanitary depots camping grounds and institutions for charitable purposes markets court-houses police stations paddocks prisons or other edifices for public use or purposes ;

(10) for cemeteries ;

(11) for places necessary for the embellishment of towns or for health recreation or amusement of the inhabitants ;

(12) for the endowment of municipal corporations within this Colony ;

(13) for resting places watering places stock routes or out-spans for travellers and stock ;

(14) for commonages for use of the inhabitants of any town or settlement ;

(15) for any other purposes of public health safety utility convenience or enjoyment for otherwise facilitating the improvement and settlement of this Colony.

13. A full and complete description of every such reserve and for the purposes for which it is made shall as soon as possible be published in the *Gazette*.

Reserves to be notified in the *Gazette*.

* 14. The Lieutenant-Governor may cancel or amend or change the specified purposes for which any reserve is made and notice of such cancellation amendment or change shall be published in the *Gazette*.

Lieutenant-Governor may change purpose of any reserve.

15. The Lieutenant-Governor by proclamation in the *Gazette* may place any reserve under the control of any municipality urban district board or other person or persons as a board of management for any of the purposes mentioned in *†section twelve* and may empower such municipality board or other person to make repeal and alter bye-laws for the control and management of such reserve or prescribing fees for depasturing thereon for directing the manner in which such fees shall be imposed paid collected and disposed of and to impose penalties not exceeding in any case five pounds for any breach thereof and two pounds a day for a continuing breach but not more than twenty pounds in the aggregate.

Reserves may be placed under board of management. Board may make bye-laws.

Such bye-laws if approved by the Lieutenant-Governor shall be published in the *Gazette* and shall be laid before the Legislative Council within fourteen days of such publication if the Legislative Council be then sitting ; and if the Legislative Council be not then sitting within fourteen days after its next meeting ; and

* For cancellation of public reserves see Govt. Notices Nos. 1152, 1904 (*Gazette* 28/10/04) ; 6, 1905 (*Gazette*, 6/1/05) ; 389, 1905 (*Gazette*, 12/5/05) ; 667, 1905 (*Gazette*, 28/7/05) ; 886, 1905 (*Gazette*, 13/10/05) ; 190, 1906 (*Gazette*, 23/2/06) ; 529 and 531, 1906 (*Gazette*, 1/6/06) ; 64, 1907 (*Gazette*, 18/1/07) ; 679, 1907 (*Gazette*, 21/6/07) ; 101 and 102, 1908 (*Gazette*, 31/1/08) ; 1170, 1908 (*Gazette*, 20/11/08) ; 1322, 1909 (*Gazette*, 26/11/09) ; 595, 1910 (*Gazette*, 30/5/10).

† Words in italics substituted by Ordinance No. 4, 1904, section one.

Existing municipal laws to continue until municipality comes under this Ordinance.

4. Whenever any existing municipality shall come under the operation of this Ordinance the following provisions shall apply :

- (1) all creditors of such municipality shall have the same rights and remedies as if the law under which such rights and remedies were conferred had not been repealed ;
- (2) all municipal bye-laws and regulations then in force in such municipality shall (unless repugnant to the provisions of this Ordinance) continue in force until altered or amended under this Ordinance ;
- (3) the councillors then in office shall continue in office under the provisions of the Municipalities Elections Ordinance 1903 ;
- (4) all rates and charges due or payable to or recoverable by such municipality shall be vested in and recoverable by the municipality constituted under this Ordinance and the valuation or assessment roll in use at such time shall continue to be used until a new one shall be made ;
- (5) all works and undertakings authorized to be executed all rights liabilities and engagements existing and all actions suits and proceedings pending by or against or in respect of such municipality shall be vested in attached to and be enforced carried on and prosecuted by or against the municipality constituted under this Ordinance and no such action suit or proceeding shall abate or be discontinued or prejudicially affected by such constitution ;
- (6) all property movable and immovable vested in any such municipality shall be vested in and belong to the municipality newly constituted.

CHAPTER II.

CONSTITUTION OF MUNICIPALITIES.

Incorporation of municipalities.

5. There shall be within every municipality established under this Ordinance or under any law a council thereof constituted and elected in manner provided in the Municipalities Elections Ordinance 1903 and the said council shall under such name or designation as the Lieutenant-Governor may by Proclamation declare be a body corporate with perpetual succession and a common seal with power to alter and change the same from time to time and shall by such name be capable in law of suing and being sued of purchasing holding and alienating land and of doing and performing such acts and things as bodies corporate may by law do and perform subject to the provisions of this Ordinance.

*6. Subject to the provisions of this Ordinance the Lieutenant-Governor may from time to time exercise all or any of the powers following :

Power of Lieutenant-Governor in regard to proclaiming municipalities.

*See notes to section eleven.

- (1) declare any town or village or *other area** to be a municipality constituted under the provisions of this Ordinance;
- (2) assign a name to such municipality;
- (3) describe the boundaries thereof;
- (4) unite any two or more villages which form one continuous area so as to form one municipality;
- (5) alter and adjust the boundaries of adjoining municipalities and determine any questions arising out of such alteration and adjustment;
- (6) sever any portion of a municipality from the municipality of which it forms a part and constitute the same a separate municipality or annex the same to any other municipality with which the portion severed forms one continuous area; and from time to time make any *apportionment*† of property rights and liabilities and give any directions as to any matters and things that may be necessary to do justice between the municipalities concerned;
- ‡ (7) *to alter from time to time the boundaries of any municipality;*
- ‡ (8) *upon declaring any town or village to be a municipality or upon the alteration of the boundaries of a municipality to exempt any part of the area of such municipality from the provisions of the Local Authorities Rating Ordinance 1903 § and thereafter in whole or in part to withdraw such exemption;*
- ‡ (9) *to confer on any person appointed to enquire into and report upon the advisability of altering the boundaries of a municipality the powers jurisdiction and privileges of the Commissions Powers Ordinance 1902.*

7. The Lieutenant-Governor may exercise any of the powers by this Ordinance conferred after the presentation of a petition in pursuance of the provisions of this Ordinance for the exercise thereof and after the publication of the substance and prayer of such petition in the *Gazette* and in some newspaper circulating in the neighbourhood referred to at least once a week during three weeks; and it shall be in the discretion of the Lieutenant-Governor to refuse the prayer of any such petition or to grant the whole or any part thereof; provided always that the Lieutenant-Governor shall not exercise in respect to any existing municipality constituted by special laws any of the said powers (anything in the next succeeding section to the contrary notwithstanding) if there shall be presented to him within three weeks after the said publication in the *Gazette* another petition signed by not less than one-half of the ratepayers registered within such municipality praying him not to exercise such powers.

How such powers to be exercised after petition presented.

* Words in italics inserted by Ordinance No. 26, 1906, section one.

† As in *Gazette*; in Ordinance of 1903 the word "appointment" is here given.

‡ Sub-sections (7) (8) and (9) added by Ordinance No. 41, 1904, section eighteen.

§ Words after § added by Ordinance No. 26, 1906, section one.

How petitions
to be signed.

8. Every petition for the constitution of a municipality under this Ordinance shall

- (1) in the case of an existing municipality be signed by not less than three-fourths of the councillors of such municipality ;
- (2) in case no municipality exists be signed by not less than twenty-five persons being registered as voters for the election of members of the Health Board or Urban District Board for the area for which a municipality is desired.

Particulars
to be stated
in petitions.

9. Every petition shall state precisely to what extent the exercise of the powers by this Ordinance conferred on the Lieutenant-Governor is desired by the petitioners and shall pray for such specific exercise thereof and may also pray for any partial exercise of such powers. And every petition for the constitution of a municipality shall state the proposed boundaries thereof.

Petitions
may be
opposed.

10. It shall be competent for any persons interested to present to the Lieutenant-Governor any counter-petition setting forth the grounds of opposition to any petition of which notice shall have been given as aforesaid.

Notice to be
given of
Lieutenant-
Governor's
intention to
exercise
powers of
his own
accord.

* 11. It shall be lawful for the Lieutenant-Governor from time to time to exercise any of the powers conferred by this Ordinance without the presentation of any petition provided that before the exercise of any such power notice be given once a week during three consecutive weeks in the *Gazette* and in a newspaper circulating in the neighbourhood stating the intention of the Lieutenant-Governor to exercise such powers. If within one month after the date of the last publication of such notice no sufficient cause shall be shown why the power proposed to be exercised shall not be exercised it shall be lawful for the Lieutenant-Governor to exercise such power ; provided however that the powers conferred by this section shall not apply to the case of any town or village having a municipality constituted by a special law.

* The following municipalities have been established under this section :—
Boksburg, by Proc. (Admn.) No. 43, 1903 ; Heidelberg, by Proc. (Admn.) No. 43, 1903 ; Klerksdorp, by Proc. (Admn.) No. 43, 1903 ; Krugersdorp, by Proc. (Admn.) No. 43, 1903 ; Middelburg, by Proc. (Admn.) No. 43, 1903 ; Pietersburg, by Proc. (Admn.) No. 43, 1903 ; Potchefstroom, by Proc. (Admn.) No. 43, 1903 ; Standerton, by Proc. (Admn.) No. 43, 1903 ; Germiston, by Proc. (Admn.) No. 45, 1903 ; Barberton, by Proc. (Admn.) No. 5, 1904 ; Benoni, by Proc. (Admn.) No. 57, 1907 ; Witbank, by Proc. (Admn.) No. 18, 1910. The following Urban District Boards were established under section *seventy-three* of this Ordinance by Proc. (Admn.) Nos. 51, 61, and 69, 1903, 1, 4, and 11, 1904, and were changed into municipalities under this Ordinance with certain reservations, by Ordinance No. 41, 1904, section *three* : Amersfoort, Amsterdam, Bethal, Belfast, Carolina, Christiana, Ermelo, Komatipoort, Lichtenburg, Lydenburg, Machadodorp, Nylstroom, Piet Retief, Potgietersrust, Roodepoort-Maraisburg, Rustenburg, Schweizer-Beneke, Springs, Ventersdorp, Vereeniging, Volksrust, Wakkerstroom, Wolmaransstad, and Zeerust. Roodepoort-Maraisburg was constituted a municipality under this Ordinance by Proc. (Admn.) No. 27, 1905. For definition of boundaries and wards see Chronological Table.

12. It shall be lawful for the Lieutenant-Governor to appoint the resident magistrate of any district together with two other persons to investigate any matter connected with any petition or counter-petition and to report thereon or upon any matter by the Lieutenant-Governor referred to such resident magistrate and other persons for report in relation to such petitions. The resident magistrate and other persons aforesaid shall report within such time as may by the Lieutenant-Governor be named in that behalf.

Resident
magistrate
and others to
investigate
matter of
petitions.

CHAPTER III.

MEETINGS OF COUNCIL.

13. The council shall meet for the despatch of business as often as may be necessary but not less than once in every month and the meetings of the council shall be open to the public and press provided that nothing in this section shall apply to any committee of the council or to a committee of the whole council.

Meetings of
council.

14. Save when it is otherwise specially provided in this Ordinance all acts matters or things authorized or required to be done by the council as such and all questions that may come before it shall be done and decided by the majority of councillors who shall be present at any meeting at which not less than one-half or such larger proportion as the council may from time to time fix of the members of the council shall attend.

Quorum.

15. *Repealed by Ordinance No. 26, 1905, section nine (3).*

Proceedings.

16. In case of equality of votes the chairman of the meeting shall have a casting vote as well as a deliberative vote.

Casting vote
of chairman.

17. Minutes of the proceedings of every meeting of the council shall be regularly entered in a book to be kept for that purpose and minutes of proceedings at a meeting of the council signed at the same or the next ensuing meeting by the chairman or by a member of the council describing himself as or appearing to be chairman of the meeting at which the minutes are signed shall be received in evidence without further proof.

Minutes of
proceedings.

18. (1) The minutes of proceedings of the council shall at all reasonable times be open to the inspection of any inhabitant of the municipality who may obtain a copy thereof or an extract therefrom on payment of such fee as may be prescribed by regulation.

Minutes of
proceedings
and
treasurer's
accounts
open to
inspection.

(2) The treasurer's accounts shall be open to the inspection of any member of the council who may make a copy thereof or an extract therefrom.

(3) The abstract of the treasurer's accounts shall be open to the inspection of any inhabitant of the municipality and copies thereof shall be delivered to any inhabitant on payment of such fee for each copy as may be prescribed by regulation.

Adjournment

19. The members present at any meeting may from time to time adjourn such meeting and if at any meeting of the council a sufficient number of members do not present themselves to exercise the powers vested in the council the member or members present shall adjourn the meeting and if there be no member present then the clerk shall adjourn the meeting.

Special meeting.

20. The mayor may at any time and shall at the request in writing of not less than one-third of the members of the council call a special meeting of the council; provided that he cause a notice of the time and place of such intended meeting to be served on every member either personally or by leaving the same at his usual place of abode twenty-four hours at least before such meeting. Such notice shall specify the object of the intended meeting and shall be signed by the mayor or the clerk. No subject other than that specified shall be dealt with at such meeting.

Committees.

21. It shall be lawful for the council to appoint out of their own body such and so many committees either of a general or special nature and constituted of such number of members as to the council may seem fit for any purpose which in the judgment of the council would be better managed by means of a committee and to fix the quorum of any such committee; provided always that the proceedings of the committee shall be regularly entered in a minute book to be kept for that purpose and reported to the council. Each committee shall elect its own chairman and the mayor of the council shall be *ex officio* a member of all such committees.

Finance committee.

22. The council shall from time to time appoint a finance committee for regulating and controlling the finances of the council; and an order for the payment of a sum out of the funds of the council shall not be made by the treasurer except in pursuance of a resolution of the council passed on the recommendation of the finance committee and no cost debt or liability exceeding fifty pounds shall be incurred except upon a resolution of the council passed on an estimate submitted by the finance committee.

Adjournment and quorum of committees.

23. Every committee appointed by the council may meet from time to time and may adjourn from place to place as it may think proper and no business shall be transacted at any meeting of the committee unless the quorum of members (if any) fixed by the council and if no quorum be fixed two members be present; and at all meetings of the committee if the chairman of the committee be not present one of the members present shall be appointed chairman and all questions shall be determined by a majority of votes of the members present and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of the committee.

Contracts for execution of work.

24. Except in cases of emergency before any contract for the execution of any work or the furnishing of any goods to the amount of one hundred pounds or upwards is entered into by the council

fourteen days' clear notice at the least shall be given in some newspaper circulating in the municipality expressing the purpose of such contract and inviting any person willing to undertake the same to make proposals for that purpose to the council. The council shall accept the proposal which on a view of all the circumstances appears to them to be most advantageous and may take security for the due and faithful performance of every such contract or the council may decline to accept any such proposal. Where such contracts are entered into or purchases made amounting to the said sum of one hundred pounds or upwards without being put up to public tender the reasons shall be stated by the finance committee in a report to be read out to the council before the resolution to make such contract or purchase has been passed and such report shall be attached to the resolution and entered in the minutes of the council.

25. Every order notice or other document requiring authentication by the council shall be sufficiently authenticated without the common seal of the municipality if signed by two councillors and the town clerk or by any officer of the council duly authorized thereto by any resolution bye-law or regulation of the council.

Authentica-
tion of
documents.

*26. *Repealed by Ordinance No. 26, 1906, section seventeen.*

Pecuniary
interest of
councillors
in matters
coming be-
fore council.

CHAPTER IV.

ACCOUNTS AND AUDIT.

27. The council shall cause proper books to be provided and true and regular accounts to be entered therein of all sums of money received and paid on account of and for the municipality and of the several purposes for which such sums of money have been received and paid.

Keeping of
accounts.

28. The Lieutenant-Governor may from time to time appoint one or more persons to examine the accounts of the municipality and the council shall by the town clerk produce and lay before the person so appointed all books and accounts of the municipality with all vouchers in support of the same and all books papers and writings in their power relating thereto.

Audit of
accounts.

29. For the purpose of any audit under the provisions of the last preceding section it shall be lawful for the auditor to hear receive and examine evidence upon oath (which oath such auditor is hereby empowered to administer) and by summons under his hand to require such persons as he may think fit to appear personally before him at a time and place to be stated in such summons and to produce all such books and papers as may be necessary for such audit. And any person so required who shall without lawful excuse refuse to attend in obedience to such summons or

Auditor's
powers.

* See now Ordinance No. 26, 1906, sections *eleven and twelve.*

who having appeared shall refuse to be examined on oath or affirmation or to take such oath or affirmation or having taken such oath or affirmation to answer such questions as shall be put to him shall be liable to a penalty not exceeding twenty pounds for every act or offence and in default of payment to be imprisoned with or without hard labour for any period not exceeding three months unless such fine be sooner paid; provided that no conviction under this section shall be taken to exempt the person convicted from liability to do or perform the act matter or thing required to be done or performed by him or from being successively convicted and punished for every distinct commission of the same act or offence.

Power of auditor to recover payments made without due authority.

*30 (1) *The auditor shall disallow every payment made without due authority according to law and surcharge the same on the person or persons making or authorizing it and shall charge against any person responsible therefor the amount of any deficiency or loss incurred by the negligence or misconduct of that person or of any sum which ought to have been but is not brought into account by that person and shall in every case certify the amount due from such person. Every sum so certified by the auditor shall be paid by such person to the town clerk or other official appointed by the council within fourteen days after the same has been so certified and if not so paid may be recovered from such person as a debt by the auditor who shall be paid by the council his reasonable costs and expenses incurred in such proceedings. Any sum so recovered shall be paid to the town clerk or other official appointed by the council; provided always that it shall be lawful for the Colonial Secretary to remit the whole or any part of any sums surcharged against any person under this section.*

(2) *For the purposes of this section the persons against whom any illegal payment may be surcharged shall include all members of the council or of any committee thereof who were present at the meeting of the council or committee thereof at which such payment was authorized and who did not cause their votes against the resolution authorizing such payment to be recorded in the minutes.*

CHAPTER V.

POWERS AND DUTIES OF COUNCIL.

Appointment of town clerk and other officials.

31. The council shall from time to time appoint a town clerk and a medical officer of health who shall be a legally qualified medical practitioner and such other officials as it may consider necessary and pay such salaries and allowances to such officials as it may determine; and unless it shall be stipulated otherwise in the contract with or in the appointment of an employee the council may at any time remove such employee upon notice of not less than one month or in case of misconduct immediately without notice.

* This section substituted by Ordinance No. 41, 1904, section *seventeen*.

32. Officers or servants of the council shall not in any wise be concerned or interested in any bargain contract or arrangement whatsoever made by or with the council. If any officer or servant is so concerned or interested or under cover of his office or employment exacts or accepts any promise fee or reward whatsoever other than his proper salary wages and allowances he shall be incapable of afterwards holding or continuing in any office or employment under this Ordinance and shall be liable to a penalty not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months. Any profits fee or reward which may have accrued to such officer or servant or which may accrue to him by reason of such bargain contract or arrangement may be recovered by the council.

No officer or servant of council to be interested in any bargain or contract of the council.

33. No matter or thing done or omitted and no contract entered into by the council and no matter or thing done or omitted by any member or officer or servant or other person acting under the direction of the council shall if the matter or thing were done or omitted or the contract was entered into *bona fide* for the purpose of executing this Ordinance subject any such person personally to any action liability claim or demand whatsoever; and any expense incurred by the council or any such person as aforesaid shall be paid by the council out of the fund applicable to the general purposes of this Ordinance; provided that nothing in this section shall exempt any such member from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of the council and which such member authorized or joined in authorizing.

Exemption of servants and members of council from personal liability.

*34. The council shall have the general control and care of all public roads streets bridges ferries squares and all other open public places and over all gardens parks or other enclosed spaces within the municipality which have been or shall be at any time set apart and appropriated by proper authority for the use of the public or to which the inhabitants of the municipality shall at any time have or acquire a common right and over all water-furrows within the municipality and not used for conveying water beyond the limits thereof and the same shall be vested in the council in trust to keep the same open for the use and benefit of the inhabitants and the council may make construct alter repair and if necessary temporarily close all roads streets open spaces bridges ferries furrows sewers drains and culverts vested in them or under their control and may make new roads streets bridges ferries dams furrows sewers drains or culverts within the municipality and if it shall be necessary † *may carry any sewers drains pipes and water-furrows through and across any private property provided that compensation shall be made by the council for any damage done*

Public streets squares, etc., vest in council.

* See Ordinance No. 41, 1904, section *nineteen*, as to power of council to erect public buildings on squares and open spaces.

† Words in italics substituted by Ordinance No. 41, 1904, section *twenty*

thereby the amount of which compensation shall if not mutually agreed upon be determined in manner provided by the Municipalities Powers of Expropriation Ordinance 1903.

Power of council to close or divert any street road or thoroughfare vested in the council.

*35. The council shall have the power anything to the contrary in this Ordinance notwithstanding to close or divert any street road or thoroughfare vested in the council under the last preceding section of this Ordinance provided that the council shall in the exercise of its power to close or divert any street road or thoroughfare be subject to the following conditions and restraints:—

(1) Before the council shall sanction any such closing or diversion not less than fourteen days' notice shall be given at a council meeting of the intention to move therefor.

(2) Before any such closing or diversion is carried out the council shall prepare a plan showing the nature thereof and shall give notice of the proposed work not less than one month before its commencement in the *Gazette* and in one or more newspapers circulating in the municipality as well as by a sufficient number of conspicuous placards posted on or near the street road or thoroughfare which it is proposed to close or divert setting forth a place where the said plan shall be open for inspection at all reasonable hours and shall also serve a copy of such notice on the owners or reputed owners lessees or reputed lessees and occupiers of all property abutting upon the said street road or thoroughfare whose addresses can after reasonable enquiry be ascertained.

(3) Where notice in writing of any claim for compensation is served on the council within the period of one month above-mentioned by any such owner lessee or occupier or any other person aggrieved by such closing or diversion the council shall make compensation to such person for any damage occasioned to him thereby and such compensation shall in default of agreement be fixed by arbitration; provided that in assessing the amount of compensation payable to any person hereunder the benefit or advantage derived or to be derived by such person by reason of such closing or diversion shall be taken into account.

(4) If any person interested as owner lessee or occupier in any property abutting on the street road or thoroughfare which it is proposed to close or divert shall at any time within the period of one month above-mentioned serve written notice on the council of any objection to such closing or diversion then unless such objection shall be withdrawn such closing or diversion shall not be carried out without the sanction of the Lieutenant-Governor.

(5) After the serving of any such objection the Lieutenant-Governor may on the application of the council appoint an

* As to Pretoria, see Ordinance I (Private), 1906, section *thirteen*.

officer to make an enquiry into the proposed closing or diversion and the objection thereto and to report thereon; and on receiving the report of such officer the Lieutenant-Governor may make an order disallowing the proposed closing or diversion or allowing it with such modification (if any) as he may deem necessary.

*36. The council may with the consent of the Lieutenant-Governor acquire construct equip and carry on within or beyond the municipality tramways or works for the supply of light heat power or water within the municipality and may make such charges and conditions for such services as it may determine.

Power to acquire and construct tramways electric and water works.

†37. The council may with the approval of the Lieutenant-Governor lay out on lands under its control such locations for natives as may be deemed desirable and erect suitable buildings thereon for the occupation of such natives and make charges therefor to be fixed by regulations and may compel all natives residing in the municipality except such as hold letters of exemption issued under Proclamation Transvaal No. 35 of 1901 or certificates of registration issued under the Native Relief Ordinance No. 28 of 1902 or are employed in service and are lodged on the premises of their employers to reside within such locations.

Council may lay out locations for natives.

‡ *The Lieutenant-Governor may from time to time make alter and repeal regulations*

(1) *for the proper carrying out of the provisions of this section and the effectual supervision of such locations.*

(2) *As amended by Ordinance No. 41, 1904, section twenty-one, repealed by Act No. 18, 1909, section one.*

Any such regulations made under this section shall be of full force and effect as law within the municipality on publication of the same in the Gazette.

Any bye-laws in force in any municipality or district of an urban district board at the date of the passing of this Ordinance for the purposes described in sub-section (2) of this section shall be deemed to be regulations made by the Lieutenant-Governor under the said sub-section (2).

38. Any member or officer of the council duly authorized in writing shall have power to enter any premises within the municipality for the purposes of exercising any of the powers of inspection or execution of works given to it under its bye-laws or by this or any other Ordinance or necessary for the proper enforcement of such bye-laws.

Council may enter premises for exercise of powers under this Ordinance.

39. The council may in the name and on behalf of the municipality enter into any contract with any person firm or body corporate

Council may make contracts for purposes of Ordinance.

* Applied to Pretoria by Ordinance No. 50, 1904, section one.

† See Ordinance No. 17, 1905, section one.

‡ For native location regulations, see Chronological Table. Words in italics substituted by Ordinance No. 41, 1904, section *twenty-one*.

(a) for the purchase or hire of any land way-leave water-right or any other property within or beyond the municipality for the purposes of this Ordinance; or

(b) for the performance of any work which the council is authorized by law to undertake or for any of the purposes of this Ordinance or any amendment thereof and all such contracts lawfully made shall bind the council and its successors and all other parties thereto. Every contract shall be deemed to be duly executed by or on behalf of the council if signed by the mayor or deputy mayor of the municipality or if signed by any one or more councillors thereto authorized by resolution of the council.

General powers.

40. The council shall have power to establish maintain and carry on any of the following things and to make such charges in respect thereof as may be fixed by bye-laws:

- (1) cemeteries and mortuaries;
- (2) markets market buildings cold storages and public weighing machines;
- (3) fire brigades;
- (4) parks and recreation grounds;
- (5) libraries and museums;
- (6) public baths and washhouses;
- (7) sanitary services for the removal and destruction of or otherwise dealing with night-soil slops rubbish and all kinds of refuse and effluent;
- (8) sewerage and drainage works within or beyond the municipality;
- (9) pounds;
- (10) slaughter-houses;
- (11) public closets urinals and lavatories;
- (12) such offices and buildings as may be required for municipal purposes;
- * (13) *bands for musical performances in public places and generally to provide musical entertainments in such places;*
- * (14) *telephones subject to the approval of the Lieutenant-Governor;*
- † (15) *to acquire equip and maintain boats and boating establishments.*

Special powers.

41. The council shall have power to do any of the following things:

- (1) to incur all expenditure necessary for the carrying out of any purpose of this Ordinance or any amendment thereof or of any municipal purpose (which shall include a reasonable amount for public entertainment and for travelling and personal expenses of members and officers on business of the council);

* Sub-sections (13) and (14) added by Ordinance No. 41, 1904, section twenty-three.

† Sub-section (15) added by Ordinance No. 26, 1906, section two.

(2) to make grants of money towards the establishment or maintenance of the institutions hereinafter mentioned not being of a private character that is to say hospitals **committees employing district nurses* libraries art galleries museums asylums for the aged destitute or infirm homes for destitute orphans and scientific institutions ;

(3) to charge fees for any licence which the council is empowered to issue and for the maintenance and regulation of water-furrows to persons supplied with water therefrom ;

(4) to promote private legislation in the interest of the municipality ;

(5) to enumerate the inhabitants of the municipality ;

(6) to sell all bye-products resulting from the carrying on of any works which may be within the powers of the council ;

(7) to plant trim or remove trees in streets and open spaces ;

(8) to let sell or otherwise dispose of any movable or immovable property of the municipality ; provided that no sale lease or other alienation of immovable property shall take place without the consent of the Lieutenant-Governor ; provided always that previous to such sanction being obtained the resolution of the council to sell lease or otherwise alienate such property shall be published during three successive weeks in two or more papers circulating in the municipality ;

(9) to do all things necessary for carrying out all the purposes for and in regard to which the council is empowered under this Ordinance or any amendment thereof to make alter or revoke bye-laws or regulations and for carrying all such bye-laws and regulations into effect ;

†(10) *to contribute to any provident or benevolent fund intended for the benefit of the officers and servants of the council and to grant pensions or gratuities to officers or servants of the council on their retirement from the council's service or otherwise ;*

‡(11) *to purchase land within the municipality as a site for a railway station and to transfer any such land to or on behalf of the Railway Administration or to reimburse to the Railway Administration any expenditure incurred by the Administration in the acquisition of a site for a railway station within the municipality.*

CHAPTER VI.

BYE-LAWS.

§42. The council shall have power to make alter and revoke bye-laws or regulations for any of the following purposes :

Power to
make bye-
laws.

* Words in italics inserted by Ordinance No. 26, 1906, section *three*.

† Sub-section (10) added by Ordinance No. 41, 1904, section *twenty-four*.

‡ Sub-section (11) added by Ordinance No. 26, 1906, section *three*.

§ As to bye-laws, see preface.

- (1) regulating any of the things which it is empowered under sections *forty* and *forty-one* of this Ordinance to do establish maintain or carry on and the charges to be made in respect thereof **except as regards pounds* ;
- (2) regulating the duties and procedure of the council and any committees thereof and the powers and duties of its officers and servants ;
- (3) preventing and extinguishing fires ;
- (4) preserving public decency ;
- (5) regulating and licensing theatres music halls^{*} public halls concert rooms public billiard-rooms and public bagatelle-rooms and other places of public amusement ;
- (6) prohibiting regulating or licensing noxious and offensive trades ;
- † (7) licensing the keeping of dogs and providing for the seizure sale or destruction of vicious dangerous ownerless and unlicensed dogs ;
- (8) regulating or preventing the keeping of bees and of wild or dangerous animals ;
- (9) preserving and protecting wild birds and animals ;
- (10) preventing or regulating the planting of trees or shrubs in public streets or squares and preventing the removal or injuring thereof ;
- (11) regulating and licensing the making of bricks and the digging or quarrying for or removal of clay gravel or stone and the cutting of firewood brushwood and grass on town lands ;
- (12) providing for the due and proper care of the common pasture and other municipal lands and regulating the quantity and kinds of live stock which each inhabitant shall be allowed to keep and depasture on the said lands and the fees to be paid in respect of all live stock kept or depastured in excess of the number so fixed. Regulating the grant of temporary grazing rights over the said lands to carriers and others frequenting or passing through the municipality or attending the markets thereof or places of worship therein or to travellers and to charge reasonable fees in consideration of the same ;
- (13) regulating and licensing wood-sawyers ;
- (14) regulating and licensing pawnbrokers.

PUBLIC HEALTH.

- (15) The prevention and suppression of infectious or contagious diseases and the maintenance of the public health ;
- (16) regulating and compelling the provision construction use and repair of drains privies and receptacles for solid or liquid refuse or slops and all other conveniences and the connection of any premises with any sewer or drain established by the council ;

* Words in italics added by Ordinance No. 41, 1904, section *twenty-six (a)*.

† See Ordinance No. 27, 1904, section *three*. (Rabies.) See also Act No. 23 of 1907, especially section *nine*.

- (17) compelling the use of any sanitary service established by the council and the method of dealing with all night-soil slops rubbish or refuse whatsoever ;
- (18) the prevention and abatement of nuisances including such as though arising beyond the municipality cause annoyance or danger or injury to health within the municipality ;
- (19) regulating wells tanks and cesspools and closing the same if expedient ;
- (20) regulating and licensing slaughter-houses and meat shops and the killing of cattle or other animals and the sale of meat ;
- (21) licensing and controlling hawkers and keepers of dairies cowsheds milk-shops restaurants cafes tea-rooms hotels eating and lodging houses and all places where articles of food or drink or drugs are manufactured or prepared for sale or sold ;
- (22) preventing the possession conveyance handling sale or offering for sale and for the destruction when necessary in the council's opinion of diseased animals and of any article of food or drink which is diseased or unfit for human consumption ;
- (23) preventing the adulteration misdescription or reduction below a proper standard of quality and for ensuring the sale in a pure state of any article of food or drink or any drug ;
- (24) regulating purveyors of milk ;
- (25) regulating the washing of clothes in public or private places and licensing persons engaged in washing or laundry work.

BUILDING.

- (26) Regulating the construction alignment and elevation of all buildings or other structures and all parts thereof and compelling the demolition removal or rendering safe of any building or structure whatsoever which in the council's opinion is dangerous or unfit for use either for structural or sanitary reasons ;
- (27) preventing the erection alteration or use of any building or structure whatsoever which either in itself or from the circumstances or nature of the locality in which it is placed is a disfigurement to the town or an annoyance to the inhabitants thereof and for securing removal or alteration of projections over streets ;
- (28) regulating the erection and use of scaffolding and hoarding during the construction demolition alteration or repair of any building and charging fees in respect thereof ;
- (29) regulating the amount of space to be allowed about buildings for securing the proper ventilation thereof and a free circulation of air ;
- (30) regulating the closing of buildings or parts of buildings unfit for human habitation ;

- (31) regulating the giving of notice and the deposit of plans and sections by persons wishing to construct or alter buildings and the approval or disapproval thereof by the council and the removal or alteration of any work begun or done in contravention of any bye-law or regulation of the council and preventing the use of any new or altered building until it shall have been certified by the council to be fit for use **and for the charging of fees for the examination of any such plans* ;
- (32) regulating the giving of notice and deposit of plans by persons wishing to lay out building lots or new townships securing the continuity and uniformity of streets on or leading to private property and preventing the laying out of new townships or building lots or the closing up of any streets roads or open spaces shown on any plan approved by the council **and for the charging of fees for the examination of any such plans* ;
- (33) regulating the construction and position of gutterings and down pipes and the discharge of the outflow therefrom.

SALES WEIGHTS AND MEASURES.

- (34) Regulating the holding of sales by auction on land or premises under the control of the council *†and for the charging of fees in respect of the holding of such sales* ;
- (35) regulating the verification stamping sale and use of weights measures and weighing instruments and charging fees in respect thereof ;
- (36) regulating the sale of goods wares or merchandise by weight or measure ;
- (37) regulating the carriage sale or use and licensing and regulating the manufacture and storage of petroleum gas and all other combustibles.

CONTROL OF STREETS AND TRAFFIC.

- (38) Regulating the traffic and preventing and removing obstructions in public roads streets and open spaces and dealing with live stock or dead or injured animals found in any public place ;
- (39) regulating and licensing road-locomotives tramcars omnibuses motor-cars cabs jinrickshas trolleys bicycles and all other vehicles whatsoever whether private or plying or working for hire and the drivers or haulers thereof and porters and fixing the charges to be made for the hire of any such vehicle plying or working for hire ;
- (40) regulating prohibiting or licensing the erection of wires in along under or over any street or public place and of placards boards or other advertisements or notices in or

* Words in italics added by Ordinance No. 41, 1904, section *twenty-six (b)*.

† Words in italics added by Ordinance No. 41, 1904, section *twenty-six (c)*.

near or in view of any public street or place; provided that no such permission or licence shall be required for posts or wires erected or laid by the Postmaster-General or the Central South African Railway Administration;

(41) regulating street decorations and the erection and removal of temporary platforms or other structures for the use of the public at any meeting or entertainment or at any procession ceremony or other spectacular display.

WATER AND LIGHT.

(42) Regulating the use and preventing the misuse or waste of or any interference with any water gas or electric power or the pollution of any water supplied by or under the control of the council or which the public have a right to use;

(43) preventing the pollution of gathering grounds springs wells reservoirs tanks cisterns filter-beds or other sources of water supply or storage whether within or beyond the municipality the water wherein or wherefrom is used or is likely to be used by man within the municipality;

(44) ensuring a proper and sufficient supply of water to all dwelling-houses schools stores factories and workshops.

NATIVES.

(45) Regulating the use of public streets by natives and prohibiting the carrying by them of knobkerries and assegais or other sticks or weapons;

(46) regulating the housing of natives by their employers;

(47) regulating and licensing wash-boys and native labourers other than those employed in industrial concerns or domestic service;

(48) *Repealed by Ordinance No. 41, 1904, section twenty-six (d).*

(49) and generally for all such things as are necessary for the maintenance of the health of the inhabitants or for the good rule and government of the municipality;

**(50) prohibiting the use of the sidewalks of any public street by natives not holding letters of exemption issued under the Coloured Persons Relief Proclamation 1901 and by coloured persons who are not respectably dressed and well conducted;*

**(51) for regulating and controlling the use and erection of any temporary or movable structures whether standing on wheels or otherwise;*

†*(52) for licensing and controlling tea-rooms or eating-houses which may be used exclusively by Asiatics;*

†*(53) for securing the eradication of the weed Xanthium Spinosum or other noxious weeds from land within the municipality and for compelling owners or occupiers of such land to cause any such weed to be eradicated on their lands;*

* Sub-sections (50) and (51) added by Ordinance No. 41, 1904, section twenty-six (e) and (f).

† Sub-sections (52) and (53) added by Ordinance No. 17, 1905, section three.

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†(54) for regulating the use and management of municipal slaughter-houses and the making of charges in connection therewith and for prohibiting the slaughtering of animals intended for the food of man elsewhere in the municipality than in municipal slaughter-houses except in the case of animals which the occupier of any premises may slaughter thereon for his own or his family's consumption ;

†(55) for granting licences but without charging any fee therefor to plumbers and drainlayers authorizing them to carry out plumbing or drainlaying work for the installation alteration or repair of any system of water supply or drainage connected or intended to be connected with any municipal water main or sewer and for regulating such plumbers and drainlayers and for prohibiting the carrying out of any such work by any unlicensed person ;

†(56) for regulating and licensing swimming baths and bathing establishments and for regulating bathing in any open piece of water ;

†(57) for licensing and regulating boating establishments and for licensing boats whether kept for hire or otherwise and for regulating the use of and fixing the number of persons to be carried in such boats ;

†(58) for regulating the size of pieces of ground upon which buildings may be erected ;

provided always that no such bye-law shall be made contrary to the provisions of this Ordinance.

How bye-laws to be made.

43. No bye-law or regulation shall be made or amended by the council until a copy of such proposed bye-law or amendment be deposited at the office of the council for inspection by any person at all reasonable times and a notice be published in some newspaper circulating in the municipality or affixed to the principal door of the offices of the council seven days prior to the meeting of the council held for the purpose of making such bye-law or regulation or amendment setting forth the general purport of the proposed bye-law or regulation or amendment of the same and stating that a copy thereof is open to inspection as aforesaid.

Procedure to be followed in case of bye-laws affecting any mining company.

44. Where any proposed bye-law affects any mining company in respect of the management of its mining operations or the control of the property on which such operations are carried on the following procedure shall be followed :

(a) the proposed bye-law as passed shall be forwarded by the council to the Chamber of Mines or to any association representing for the time being the companies engaged in mining operations within the municipal area ;

† Sub-sections (54) (55) (56) (57) and (58) added by Ordinance No. 17, 1905, section three.

(b) if the Chamber of Mines or such association as aforesaid desires to object to such bye-law on the ground that the interests of any mining company would be unduly prejudiced thereby it shall transmit to the council a statement of such objections to the proposed bye-law within a period of fourteen days from the date on which such bye-law was received by it from the council ;

(c) on receipt of such statement within the time specified the council shall in submitting such bye-law for the approval of the Lieutenant-Governor forward a copy of such statement together with a statement of any observations which they may desire to make thereon for the consideration of the Lieutenant-Governor ;

(d) the Lieutenant-Governor shall refer the proposed bye-law together with the statements hereinbefore mentioned to the Commissioner of Mines for report before approving or rejecting such bye-law.

*45. (1) *After any bye-law has been made or amended by the council under the provisions of this Ordinance such bye-law or any amendment thereof shall be submitted for the approval of the Lieutenant-Governor who shall be satisfied before approving such bye-law or amendment thereof that the provisions of section forty-three have been complied with.*

Bye-laws to be published in Gazette when approved by Lieutenant-Governor.

(2) *If such bye-law or amendment thereof is approved by the Lieutenant-Governor such bye-law or amendment so approved shall be transmitted by the Colonial Secretary to the town clerk and a copy of the bye-law or amendment thereof so approved shall be published by a notice in some newspaper circulating in the municipality or by a notice affixed to the principal door of the offices of the council and such notice shall be signed by the mayor or chairman or two councillors and by the town clerk.*

(3) *Upon the expiration of a period of seven days from the date on which the said notice shall have been published in manner aforesaid such bye-law or amendment thereof shall have the force of law within the municipality.*

(4) *A copy of any bye-law made under this Ordinance signed and certified by the town clerk to be a true copy and to have been duly approved by the Lieutenant-Governor and published as aforesaid shall be evidence in all legal proceedings until the contrary is proved that such bye-law has the force of law within such municipality.*

(5) *The original bye-law approved by the Lieutenant-Governor as aforesaid shall be open to inspection at the offices of the council at all reasonable hours by any person ; and it shall be the duty of the town clerk to furnish any person on application therefor a copy of every such bye-law on payment of such sum as may be determined by the council not exceeding threepence for every hundred words contained in such bye-law or twenty shillings in all.*

* This section substituted by Ordinance No. 41, 1904, section twenty-seven.

(6) *Every bye-law in force in any municipality may be repealed by the Lieutenant-Governor and such repeal shall be notified in such municipality by the Colonial Secretary by the affixing of a notice to the principal door of the magistrate's court house and by publishing in a newspaper circulating in the district a notification of such repeal.*

Penalties for
breach of
bye-laws.

46. The council may by regulation or bye-law impose a penalty for any breach of any bye-law or regulation made under this or any amending Ordinance and may also impose different penalties in case of successive breaches but no such penalty shall be imposed exceeding fifty pounds and any bye-law or regulation may provide that in addition to any such penalty any expense incurred by the council in consequence of any breach of such bye-law or regulation or in the execution of any work directed by any such bye-law or regulation to be executed by any person and not executed by him shall be paid by the person committing such breach or failing to execute such work.

Power of
arrest.

47. Any officer of the council in uniform or bearing a visible badge of office authorized thereto in writing by the council shall have power to arrest without warrant any person who shall in his presence commit any offence against this Ordinance or any bye-law in force in the municipality and detain such person until he can be delivered into the custody of a constable or police officer to be dealt with according to law; provided that no person shall be arrested or detained without warrant unless there shall exist reasonable ground for believing that except by the arrest of the person offending he could not be found or made answerable to justice without delay trouble or expense.

Prosecutions
for contra-
vention of
bye-laws.

48. All offences against any bye-law or regulation in force in the municipality shall be deemed to be offences against this Ordinance and in any prosecution for contravening the provisions of any such bye-law or regulation it shall be sufficient to allege that the accused is guilty of contravening a bye-law or regulation of the council and to allege the act constituting such contravention describing the bye-law or regulation by number.

Prosecutions
by council
for breach of
bye-laws.

49. The town clerk or any person authorized thereto by the mayor may prosecute summarily in the court of the resident magistrate for all breaches of the council's bye-laws or regulations and the provisions of any law relating to prosecutions by private persons shall apply to all such prosecutions.

Penalties.

50. Every person guilty of an offence against this Ordinance or any bye-law in force in the district shall for every such offence be liable to the penalty expressly imposed by this Ordinance or by the bye-law and if no penalty be imposed then to a penalty not exceeding ten pounds.

Recovery of
penalties.

51. All penalties or other moneys payable in respect of any offence against this Ordinance or any bye-law in force in the municipality may be recovered before any court of competent jurisdiction.

52. Save and except where it is otherwise specially provided whenever any penalty shall have been imposed under the provisions of this Ordinance or of any bye-law in force in the municipality and the person convicted shall not forthwith pay the same the court may direct that such person be imprisoned with or without hard labour for a period not exceeding one month if the penalty imposed do not exceed five pounds or for a period not exceeding three months if the penalty be above five pounds and such person shall be imprisoned as aforesaid unless he shall sooner pay the penalty.

Default of
payment of
penalties.

53. All penalties recovered for offences against the bye-laws of the council or for offences against this Ordinance or any bail forfeited for the failure of any person charged with any such offence to appear to answer such charge shall be paid into the revenue of the council.

Application
of penalties.

54. All actions against the council shall be brought within six months of the time when the causes of such actions arose and all such costs charges and expenses as the council shall be put to or become chargeable with by reason of the prosecution or defence of any such action or under any judgment of the court shall be paid out of the revenue of the council.

Actions.

55. The following persons shall be liable to a penalty not exceeding ten pounds or to imprisonment with or without hard labour for three months

Obstructing
officers of the
council.

(1) any person who wilfully obstructs any member of the council or any person duly employed by the council in the execution of his duty as such ;

(2) any occupier of premises who prevents the owner of such premises from complying with any of the requirements of the council;

(3) any occupier of premises who on demand refuses or wilfully omits to disclose or wilfully misstates the name of the owner of such premises.

56. If any council shall fail to make alter or revoke such regulations as in the opinion of the Colonial Secretary are necessary for the purposes of section *forty-two* sub-sections (15) (16) (17) (18) (19) (20) (22) and (43) so far as it applies to the prevention of the pollution of water which the public have to use for drinking purposes it shall be lawful for the Colonial Secretary to give notice to the council in default requiring it to make alter or revoke such regulations ; if such council shall fail to comply within one month after the receipt of such notice it shall be lawful for the Lieutenant-Governor to proclaim such regulations as may be considered necessary which regulations shall thereupon have the force and effect of law within the municipality.

Power of
Lieutenant-
Governor
under certain
circum-
stances to
make
regulations.

57. If any council fails to enforce or carry out any regulations made under the provisions of the last preceding section it shall be lawful for the Lieutenant-Governor to enforce or carry out

Power of
Lieutenant-
Governor to
enforce such
regulations.

such regulations and to authorize any person or persons to take the necessary steps for that purpose; in order to carry out or enforce such regulations it shall be lawful for the Lieutenant-Governor to expend such sum as to him may seem necessary provided that any money expended by the Lieutenant-Governor under this section shall be recoverable by the Colonial Secretary from the council in any competent court.

* 58. In cases of urgent necessity arising from the existence or threatened outbreak in any municipality *†whether such municipality shall have been brought under the operation of this Ordinance or not* of small-pox cholera diphtheria typhus yellow fever bubonic plague or any contagious or infectious disease which the Lieutenant-Governor may from time to time proclaim to be a disease *‡* within the meaning of this section it shall be lawful for the Colonial Secretary to make and proclaim such regulations to be in force within such municipality as may be required to prevent the outbreak or check the progress of or eradicate such disease: any regulations so made and proclaimed under the provisions of this section for any such municipality shall have the force of law therein until repealed or amended by the Lieutenant-Governor.

Colonial Secretary may make regulations for prevention checking or eradication of disease.

CHAPTER VII.

FINANCIAL.

59. The revenue of the council shall consist of

- (1) all rates levied by the council;
- (2) all fines imposed by a competent court and forfeited bail bonds for the contravention of bye-laws and regulations made by the council and of the provisions of this Ordinance;
- (3) all licence moneys or licences issued by the council and all market dues pound fees and taxes on dogs;
- (4) all charges levied by the council for the supply of sanitary services;
- (5) *Repealed by Act No. 18, 1909, section one.*
- (6) all other fees or charges recoverable by the council;
- §(7) all taxes payable under any law now in force in respect of erven within the municipal boundaries.

Revenue of council.

* As to regulations for prevention of enteric fever and dysentery, see Govt. Notices Nos. 105, 1906 (*Gazette*, 26/1/06), and 326, 1906 (*Gazette*, 30/3/06). See also footnote to Ordinance No. 3, 1905, section one.

† Words in italics inserted by Ordinance No. 41, 1904, section *twenty-eight*.

‡ Enteric fever and dysentery proclaimed diseases by Proc. (Admn.) No. 10, 1906.

§ As amended by Ordinance No. 41, 1904, section *twenty-nine*. See Govt. Notice 76, 1904 (*Gazette*, 22/1/04), by which all erf taxes under Law No. 11, 1896, were made payable to the Municipality or Urban District Board; Law No. 11, 1896, was, however, repealed by Act No. 18, 1908, section *four*; as to arrear taxes on erven, see Ordinance No. 17, 1905, section *five*.

* *All charges due for sanitary or other services shall be recoverable from the owner of the premises in respect of which the services were rendered ; provided that the owner shall in the absence of any agreement to the contrary be entitled to recover from the occupier of the said premises for the time being any such charges paid by him in respect of the occupation of the said occupier.*

All taxes payable under this section to the council in respect of erven within the municipal boundaries shall be recoverable as if the same were rates imposed under the Local Authorities Rating Ordinance 1903 and the provisions of that Ordinance shall mutatis mutandis apply for the purposes of such recovery.

No transfer or cession of any premises shall be passed before any registration officer until a receipt or certificate signed by the town clerk or other person authorized by the council shall be produced to such registration officer showing that all taxes in respect of erven and all moneys due in respect of sanitary services rendered by the council have been paid to it.

The books and registers kept by the council or any extracts therefrom certified by the town clerk shall in any proceedings for the recovery of such taxes and charges for services aforesaid be prima facie evidence of the amounts due to the council in respect thereof.

†60. The council shall have power to refuse to grant any licences to carry on any trade or business which it has power to grant in accordance with bye-laws made under section *forty-two* of this Ordinance on any of the following grounds :

Power of
council to
refuse
licences.

(a) that the applicant has been convicted three times within the three years preceding his application of contravening the law or the bye-laws of any municipality or urban district board with regard to the conduct of the trade for which the licence is applied for in such a manner as to cause danger to the public health ;

(b) that the premises on which the applicant intends to conduct his trade do not conform to the requirements of the council's bye-laws ;

provided however that any applicant for a licence whose application has been refused may appeal against the council's decision to the court of the resident magistrate and on such appeal in the event of the council failing to satisfy such court that the licence was refused on good and sufficient grounds such court may make an order requiring the council to grant such licence and such licence shall be granted accordingly ; and provided further that it shall be within the discretion of the council to refuse to grant licences to the hauler of any jinricksha or to the driver of any road locomotive tramcar omnibus motor-car cab trolley or other vehicle plying for hire anything to the contrary in this Ordinance notwithstanding.

* Words in italics substituted by Ordinance No. 41, 1904, section *twenty-nine*.

† See Ordinance No. 17, 1905 section *four*, for additional reasons of refusal.

Power of council to refuse to license certain premises.

61. The council shall have power to refuse to licence any premises as a theatre music-hall public-hall concert-room or other place of amusement or Kaffir eating-house on any of the grounds mentioned in the preceding section and also on any one or more of the following grounds :

- (a) that the applicant has failed to produce satisfactory evidence of good character ;
- (b) that the premises in respect of which a licence is sought or any adjacent premises owned or occupied by the applicant are frequented by persons of bad character ;
- (c) that the granting of such a licence in respect of the premises for which the same is sought is calculated to cause nuisance or annoyance to persons residing in the neighbourhood ;
- (d) that the granting of such a licence would be contrary to the public interest ;

provided however that the refusal of the council to grant any licence on any of the grounds herein stated shall be subject to the same appeal as is provided in the preceding section.

Penalty on conviction for contravention of law or council's bye-laws.

62. On the conviction of any person holding a trade licence granted by the council for any contravention of the law or the council's bye-laws with regard to the conduct of such trade it shall be lawful on the application of the council for the resident magistrate before whom such person is convicted to cancel or suspend his licence and order that no new licence to carry on such trade within the same municipality shall be granted to such person for a period not exceeding two years from the date of such cancellation and thereupon such person shall become disqualified to hold a licence during such period of cancellation or suspension.

Powers to grant licences applicable to council of any existing municipality.

63. The powers to grant licences conferred under section *forty-two* on the council of any municipality established under this Ordinance shall be made applicable to the council of any existing municipality whether brought under the operation of this Ordinance or not and sections *sixty* to *sixty-two* hereof shall apply with regard to the licences which may be granted by such councils.

Advances by the Government.

64. It shall be lawful for the Lieutenant-Governor to advance from time to time to the council such moneys as he may think fit for the proper carrying out of the provisions of this Ordinance and on such terms and conditions as to repayment as to the Lieutenant-Governor may seem proper. The moneys so advanced and the interest thereon shall constitute a liability of the council and shall be a charge on the property and revenues of the council present and future.

Borrowing powers.

*65. (1) It shall be lawful for the council from time to time to raise loans in such amounts and on such conditions as may be approved by the Lieutenant-Governor subject to the provisions of this Ordinance.

* Applied to Pretoria by Ordinance No. 50, 1904, section *one*.

(2) Such loan shall be secured on the property and revenues of the council including any lands which may be specially placed at the disposal of the council under the provisions of any law provided always that this section shall not be deemed to confer any powers of alienating such lands other than are conferred by such law.

(3) Where any such loan shall be raised by means of stock the provisions of the Johannesburg Municipality Borrowing Powers Ordinance 1903 with regard to the issuing of such stock the provision to be made for repayment of interest thereon and for the redemption thereof at the time fixed for repayment and the proceedings to be taken in case of default shall *mutatis mutandis* apply.

(4) If at any time any interest due on any loan other than stock shall remain unpaid for three months after demand therefor in writing has been lodged with the town clerk by the person entitled thereto or his duly authorized representatives application may be made by such person or his representatives to any competent court for the appointment of a receiver of the property and revenues on which the loan is secured.

(5) On the hearing of such application the court may make such order and give such directions as under the circumstances shall seem expedient for raising and payment of the moneys due. In particular the court may order and declare that a rate or rates of such amount or amounts as it shall fix be levied upon all rateable property within the municipality. And such rate so ordered shall have the same incidence as any rate imposed by the council and may be enforced in like manner and the proceeds thereof shall be paid into court or otherwise as the court shall direct.

(6) If at any time default shall be made in the repayment of any loan after a period of one month from the date on which such loan shall have become repayable the like proceedings may be instituted on the application of the person to whom such repayment shall be due or his duly authorized representative.

(7) The court on such application in addition to any order which it is empowered to make under the sub-section (5) may if it shall think fit order the sale of any property on which the loan may be secured subject always to the provisions of any law as regards the alienation of any lands vested in the council under such law.

CHAPTER VIII.

MISCELLANEOUS.

66. When and as soon as a municipality is established for any place which includes the area under the jurisdiction of a health board established under Proclamation Transvaal No. 28 of 1901 or of an urban district board established **under section seventy-three of this Ordinance or under any law establishing urban district boards.*

Liability of council for liabilities and engagements of urban district board or health board.

* Words in italics substituted by Ordinance No. 4, 1904, section one.

(1) all works and undertakings authorized to be executed all rights liabilities and engagements existing and all actions suits and proceedings pending by or against or in respect of such board shall be vested in attached to and be enforced carried on and prosecuted by or against the council of the municipality so established and no such action suit or proceeding shall abate or be discontinued or prejudicially affected by such establishment ;

(2) all property movable and immovable and all moneys of or vested in such board shall be vested in the council of the municipality established as aforesaid ;

(3) all bye-laws made by such board in force at the date of the establishment of such municipality shall continue in force throughout the municipality until repealed altered or amended.

Persons offending against order or notice under this Ordinance to be deemed guilty of offence against Ordinance.

67. Where any matter or thing is by this Ordinance or by any order or notice made and published under the authority thereof directed or forbidden to be done or where any authority is given by this Ordinance to any person to direct any matter or thing to be done or to forbid any matter or thing to be done and such act so directed to be done remains undone or such act so forbidden to be done is done in every such case every person offending against such direction or prohibition shall be deemed guilty of an offence against this Ordinance.

Arbitration.

68. In case of any dispute or difference arising in regard to any matter necessitating settlement by arbitration or in case of reference either by agreement or by operation of any law under which other provision is not made of any dispute in which the council shall at any time be concerned to arbitration the provisions of the sections relating to arbitration in the Expropriation of Lands and Arbitration Clauses Proclamation 1902 shall except as hereinafter provided apply *mutatis mutandis* to arbitration proceedings by the council as if the said sections were inserted in this Ordinance.

Costs of arbitration.

69. The costs of and incidental to any reference to arbitration shall be in the discretion of and be settled by the arbitrator or arbitrators or umpire as the case may be.

Before arbitrators each party may appear by counsel.

70. Upon all proceedings before any arbitrator or arbitrators or umpire as the case may be each party may appear in person or by counsel or solicitors or admitted and licensed law agents and may produce such witnesses and documentary evidence as the arbitrator or arbitrators or umpire as the case may be shall allow.

Lieutenant-Governor may in default of meeting of council for three months dissolve said council and appoint persons to be council of municipality.

71. In case there shall not be at any time in any municipality for the space of three months any meeting of a council it shall be lawful for the Lieutenant-Governor to dissolve the said council and to nominate and appoint by Proclamation such number of fit and proper persons as he shall select being not less than five nor more than seven to be the council of such municipality for the purposes of this Ordinance and every such nominated council shall

be competent to exercise and is hereby required to exercise all and singular the powers and authorities vested under this Ordinance in the said council; provided

(a) that the person so nominated and appointed may or may not be persons resident within such municipality as may be found convenient;

(b) that every nominated council shall notwithstanding anything to the contrary contained in the Municipalities Elections Ordinance 1903 continue to sit until it shall be dissolved by Proclamation of the Lieutenant-Governor and prior to such dissolution a council shall be elected for such municipality as aforesaid at such date as may be notified by the Lieutenant-Governor and in manner provided in the Municipalities Elections Ordinance 1903 for the holding of a first election of councillors under that Ordinance.

* 72. (1) *The provisions of Law No. 2 of 1882 Law No. 8 of 1899 Law No. 8 of 1888 Law No. 3 of 1891 and Law No. 13 of 1894 shall not apply to any pound or market established by the council or to any dogs within the municipality or to pawnbrokers carrying on business within the municipality where and as soon as regulations have been made by the council thereof respectively relating to pounds markets dogs or pawnbrokers.*

Certain laws not to apply within the municipality.

(2) *The terms "council" and "municipality" in this section shall include also a council of a municipality or a municipality not subject to or brought under the operation of this Ordinance.*

(2) The regulations for towns published in the *Staatskoerant* of 25th October 1899 shall not apply within any municipality in which a council has been established under this Ordinance.

(3) *Repealed by Ordinance No. 26, 1906, section nine.*

CHAPTER IX.

URBAN DISTRICT BOARDS.

73. *Repealed by Ordinance No. 41, 1904, section two.*

The Lieut.-Governor may by Proclamation establish urban district boards.

74. *Repealed by Ordinance No. 41, 1904, section two.*

Qualifications of voters and members.

75. Proclamation Transvaal No. 28 of 1901 is hereby repealed but notwithstanding such repeal every health board established under Proclamation Transvaal No. 28 of 1901 shall continue to exist and exercise the powers vested in it under the said Proclamation until the first election of members of the urban district boards established under section *seventy-three* of this Ordinance for the district for which such health board was established.

Proclamation Transvaal No. 28 of 1901 repealed.

76. This Ordinance may be cited as the Municipal Corporations Ordinance 1903.

Title.

* Sub-sections (1) and (2) in italics were substituted by Ordinance No. 41, 1904, section *thirty*. See Ordinance No. 23, 1905, section *one*.

No. 59 of 1903.]

[Promulgated 31st July, 1903.]

ORDINANCE

TO REMOVE RESTRICTIONS ON THE IMPORTATION OF EXPLOSIVES
INTO THE TRANSVAAL.

Assented to 27th July, 1903.

WHEREAS it is desirable that the restrictions at present existing on the importation of explosives into the Transvaal be removed ;

Be it hereby enacted by the Lieutenant-Governor of this Colony with the advice and consent of the Legislative Council thereof as follows :

1. The resolutions passed by the First Volksraad in its sitting of the 1st to the 5th of September 1893 Articles 1266 to 1278 inclusive and Articles 1280 to 1299 inclusive and Articles 1303 1304 are hereby repealed.

The contract between the Government of the late South African Republic and Lambertus Gerhardus Vorstmann of Pretoria dated 25th October 1893 and registered at Pretoria on the 26th of October 1893 and as modified by the contract between the same parties dated the 24th day of May 1894 and registered at Pretoria on the 25th day of May 1894 and the contract between the said Government and the said Lambertus Gerhardus Vorstmann as representing De Zuid Afrikaansche Fabrieken voor Onploffbare Stoffen Beperkt dated the 20th day of December 1899 and registered at Pretoria on the 20th day of December 1899 translation of which forms Schedule "A" annexed hereto are hereby deprived of any legal effect.

2. *Repealed by Ordinance No. 4, 1905, section one.*

3. *Repealed by Ordinance No. 4, 1905, section one.*

4. This Ordinance may be cited as the Explosives Importation Ordinance, 1903.

Repeal of laws.

Restriction on importation and exportation of explosives.

Penalties.
Title.

TRANSLATION.

SCHEDULE A.

(1.)

TRANSLATION OF CONTRACT.

GOVERNMENT S.A.R. AND L. G. VORSTMAN.

Respecting the carrying on of the State Monopoly for the manufacture of
Dynamite, etc.

Dated 30th October, 1893.

"Government Gazette," 1st November, 1893.

Supplement to "Staatskoerant", Wednesday, 1st November, 1893.

No. 373.]

[R11216/93.]

GOVERNMENT NOTICE.

For the information of the public the following contract is published entered into between the Government of the South African Republic and Lambertus Gerhardus Vorstman respecting the carrying on of the State Monopoly for the manufacture and sale of the trading in and the importation and exportation of gunpowder ammunition dynamite and all other explosive materials.

C. VAN BOESCHOTEN,

Acting State Secretary.

Government Office,

Pretoria, 30th October, 1893.

CONTRACT

Between the Government of the South African Republic and Lambertus Gerhardus Vorstman of Pretoria respecting the carrying on of the State Monopoly for the manufacture and sale of the trading in and the importation and exportation of gunpowder ammunition dynamite and all other explosive materials.

The Government of the South African Republic acting with the advice and consent of the Executive Council (*vide* Art. 573 of Resolution dated 19th October, 1893) duly and lawfully represented by the Honourable the Acting State Secretary of the South African Republic Mr. Cornelis van Boeschoten who is authorized to sign and enter into this agreement by Resolution dated 5th September 1893 of the Honourable the First Volksraad hereafter called "the Government" of the one part and Lambertus Gerhardus Vorstman of Pretoria of the other part agree as follows;

Article 1. The Government appoints the second undersigned as its sole agent to the exclusion of all other persons for the carrying on of the monopoly for the manufacture the import and export of the trade in and sale of gunpowder fireworks ammunition and other explosives of whatever description. The agent shall have the right to form a company for that purpose.

2. The duration of this agency shall be for fifteen years from the date of this agreement. Anything not mentioned in this agreement shall be bound by the Regulations fixed by the Resolutions of the Honourable the First Volksraad mentioned hereinbefore dated 1st to 5th September, 1893, copy of which is attached hereto.

3. The Government undertakes that in case permits are issued to persons referred to in Article 2 of the Regulations the following conditions shall apply:—

- (a) Permits will only be issued to persons who have declared in writing that they require the explosives for their own use only and the quantity shall in no case be greater than that required for three months' consumption.
- (b) No permits shall be available for longer than four months from the day of issue.
- (c) All explosives obtained on such permits are liable to a special import duty of 8½d. per lb. besides the ordinary *ad valorem* duty.
- (d) The Government will when requested point out to the agent an official who will supply him monthly with information as to how much and to whom permits have been granted for the importation of dynamite etc. and when such dynamite etc. has been imported in order that measures may be taken in regard to the quantities required for consumption.

4. The rent of the powder factory referred to in Article 5 of the Regulations is hereby fixed at £3750 per annum.

The Government shall have the right at any time during the period of this contract to take back the powder factory on paying the agent for any extra improvements made to it which have been approved by the Government provided the same are serviceable and are of the value represented at time of taking over wear and tear to be taken into consideration. In such a case payment of rent will only be made to the date of taking over.

5. The maximum prices referred to in Article 6 of the Regulations which the agent will be allowed to charge shall be reckoned as follows:—

For dynamite at present known as No. 1	..	..	£4	15	0
No. 2	..	..	4	5	0
No. 3	..	..	3	13	0

The agent shall be bound to charge no higher price for the supply of cartridges to the Government than they can be imported by the latter from Europe not inclusive of import duty and the Government reserves to itself the right to supply such cartridges to the burghers of this Republic as it may deem fit when same are for their own use only.

6. The agent undertakes to erect in the Republic the factories referred to in Article 10 of the Regulations at such places as may be decided by the agent in consultation with the Government and at the outside within two and a half years after the date of the signing of this contract.

The agent undertakes the payment every three months of the rent laid down in Article 11 of the Regulations and the sum of 5s. on every case of dynamite sold together with the supply of properly certified statements as well as an amount not exceeding 20 per centum of the profits.

The profits are understood to be the balance remaining after deduction of all expenses wear and tear the usual "writings off" and an interest of 8 per centum on the capital.

The agent shall be bound to keep proper books in the commercial style used in businesses of this description and the Government shall have the right at all times to have the books inspected by an official or person appointed for the purpose or by a committee of officials or persons.

A proper balance-sheet shall be made up yearly whereby in terms of this Article the profit is stated. A certified copy shall thereafter be sent by the agent to the Government and the amount due to the latter shall be paid out.

7. With reference to the letters patent described in Article 12 of the Regulations the Government undertakes that the following regulations shall apply:—

In case the Government should grant letters patent for the discovery of any explosive such patent shall furnish to no one other than the agent appointed to carry out these instructions the right to manufacture and to sell the material named therein within the boundaries of the South African Republic.

Should the Government or the agent deem it desirable to take up or bring into use a discovery of the kind and should the Government in that case be unable to make an agreement with the patentee owner of or person entitled to that discovery respecting the use of the same then shall both parties (the Government and the patentee) name an arbitrator whilst the third or umpire whose decision shall be final shall if necessary be appointed by the Chief Justice.

8. This agreement shall have effect within the territory of the South African Republic as at present existing or that may at any time become extended.

If in the future the South African Republic should include districts or provinces in which provision has already been made respecting the materials or matters which are the subject of this agreement then it shall depend upon the Government whether these instructions shall be extended to the new districts or provinces.

9. In case the agent of the Government is unable for a limited period to comply with the requirements in this Republic for explosives owing to explosions accidents disaster or other *force majeure* and causes outside the control and responsibility of the agent the Government can import the explosives until the agent is again in a position to supply the explosives required.

In that case the Government will give to the agent the preference in the importing thereof.

The agent shall be bound to put the factories in working order again in the shortest possible time after any accident as mentioned in this article.

10. In case the Government imports any explosives as mentioned in Article 13 of the Regulations the preference will be given to the agent to import same for the Government.

11. All persons in the service of the agent are hereby exempted from personal commando and military service and service in the field in war time provided that their contracts are made under the condition that the Government shall have the right at any time if considered necessary to take over the contracts they binding themselves to work out their period of service with the Government.

12. If the Government avails itself of Article 15a of the Regulations then it will be bound to purchase from the agent the explosives required in the country in terms of this contract. The trading expenses to be deducted.

The period referred to in Article 15f of the Regulations is hereby fixed at six months.

In case the agent by his own contributory negligence culpability carelessness or neglect continue to be unable to carry out the conditions of this agreement after being admonished in writing to do so and after the lapse of a period for restarting of six weeks at the utmost the Government shall have the right to cancel this agreement. If the neglect or carelessness is intentional the Government will have grounds for action for cancellation of this contract without any notice.

13. The agent may allow the sale of articles shown in this agreement by means of one or more persons.

14. The agent of the Government is bound to pay the import duties on the machinery and implements necessary for the carrying out of this agreement.

15. The Government may introduce measures of precaution or safety with reference to the forwarding and the storing of the said explosives.

The Government will not hinder the export of these explosives except for reasons of danger to the State or other weighty reasons.

16. With reference to Article 17 of the Regulations the Government makes the following arrangement with the agent to the exclusion of every one else:—

(a) During the time that the factories to be erected by the agent are incomplete the Government will itself import all material and items necessary for manufacturing dynamite and other explosives in the stores of the agent according to particulars of prices quality and quantity approved by the Government with this understanding that this importation shall only extend for the time that the factory or factories are incomplete and in any case not longer than for two years and a half.

(b) The Government will place the above-named materials and items at the disposal of the agent for manufacture trade and sale in accordance with the above-mentioned regulations and the agent will manufacture trade and sell on the order and on account of the Government under the above-named regulations in so far as they are applicable hereto. The agent will send statements to the Government each month mentioning particulars of manufacture trading and sales and paying the Government all moneys received for sales from which after deduction of 5s. per case and the amounts paid by the Government for the material imported therefor the balance will be paid out to the agent.

17. Within eight days after the signing of this contract the agent will be bound for the due performance of the undertaking to erect the factories herein mentioned and for the carrying out of the contract until the factories are properly erected and in working order to find security for an amount of £30,000 which shall include all his existing assets in this country upon which bonds shall be properly passed.

18. All differences regarding the meaning or interpretation of this agreement which may arise between the parties to same shall not be decided by the ordinary judge but by arbitrators from whose award there shall be no appeal.

In case the parties cannot come to an agreeable understanding with reference to the interpretation of this agreement the one part will give written notice to the other stating the disputed point existing in the agreement and that they will invoke the decision of the arbitrator.

The parties will then each appoint an arbitrator and the two latter will appoint a third.

These decisions shall at the utmost be given within three months.

On the non-appointment of an arbitrator by one of the parties or undue delay in doing so or in case of disagreement of the two appointed over the choice of a third the appointment will be made by the Chief Justice or his substitute in the High Court of this Republic and the parties will be heard or called.

Thus done and contracted this 25th day of the month of October, 1893, in the presence of the undersigned witnesses.

(Signed) C. VAN BOESCHOTEN,
Acting State Secretary.
L. G. VORSTMAN.

Witnesses :

W. E. HOLLARD.
P. L. A. GOLDMAN.

Registered on the 26th October, 1893, in the Register of Deeds Book C.I. folio 348.

(Signed) J. C. MINNAAR,
Registrar of Deeds.

A true translation.

P. K. BENNING JAUSSENIUS,
Sworn Translator.

(2.)

Translation from "Staatskoerant," dated 30th May, 1894.

NEW CONTRACT

BETWEEN

THE GOVERNMENT OF THE S.A.R. AND L. G. VORSTMAN.

POWDER FACTORY.

No. 150.]

[R5175/94.

GOVERNMENT NOTICE.

For the information of the public the undermentioned contract is hereby published being a contract entered into between Dr. Willem Johannes Leyds on behalf of the Government of the South African Republic and Lambertus Gerhardus Vorstman as well as Regulations respecting the carrying on of the State Monopoly for the manufacture sale trading in and the importation and exportation of gunpowder ammunition dynamite and all other explosive materials.

DR. W. J. LEYDS,
State Secretary.

Government Buildings,
Pretoria, 28th May, 1894.

[R5175/94.

NEW CONTRACT.

Between the Government of the South African Republic and Lambertus Gerhardus Vorstman of Pretoria respecting the carrying on of the State Monopoly for the manufacture sale trading in and the importation and exportation of gunpowder ammunition dynamite and all other explosive materials.

The Government of the South African Republic acting with the advice and consent of the Executive Council (*vide* Resolutions dated 19th October 1893 Article 573 and dated 22nd May 1894 Article 282) duly and lawfully represented by the Honourable State Secretary of the South African Republic Dr. Willem Johannes Leyds who is authorized by Resolution dated 5th September 1893 to sign and conclude this agreement on behalf of the Honourable the First Volksraad hereinafter called "the Government" of the one part and Lambertus Gerhardus Vorstman of Pretoria of the other part agree as follows :—

Article 1. The Government appoints the second undersigned as its sole agent to the exclusion of all other persons for the carrying on of the monopoly for the manufacture the importation and exportation of the trade in and sale of gunpowder fireworks ammunition dynamite and other explosive materials of whatever description. The agent shall have the right to form a company for that purpose.

The said company shall from the date of its formation replace L. G. Vorstman in this contract and all his obligations to the Government in connection therewith which from the date of the formation of the company will be considered to exist as between the Government and the company instead of as between the Government and L. G. Vorstman and whenever the agent is spoken of in the following Articles "the company" shall be understood.

The Government shall have the right to name a member of the board controlling the company through whom all communications between the Government and the company shall be transacted. The first member of the board to be so named shall be Mr. L. G. Vorstman.

2. The duration of this agency shall be for 15 years from the date of the agreement of 25th October 1893.

Anything not mentioned in this agreement shall be governed by the Resolutions of the Honourable the First Volksraad hereinbefore mentioned dated 1st to 5th September 1893 copy of which is attached hereto.

3. The Government undertakes that in case permits are issued to persons referred to in Article 2 of the Regulations the following conditions shall apply :—

- (a) Permits will only be issued to persons or companies who have given a declaration in writing that they require the explosives for their own use only and the quantity shall in no case be greater than that required for three months' consumption.
- (b) No permits shall be available for longer than four months from the day of issue. No permits will be issued at any time when the supply of explosives in the country being the product of the company amounts to at least 10,000 cases (the 10,000 cases to consist of the various kinds and quality of explosives in proportion to the requirements applied for in the country).
- (c) All explosive materials obtained on such permits are liable to a special import duty of 8½d. (eight and a half pence) per lb. besides the ordinary *ad valorem* duty.
- (d) The Government will when requested point out to the agent an official who will supply him monthly with information as to how much and to whom permits have been granted for the importation of dynamite etc. and when such dynamite etc. has been imported in order that measures may be taken respecting the quantities required for consumption.

4. The rent of the powder factory referred to in Article 5 of the Regulations is hereby fixed at £3750 per annum. The Government shall have the right at any time during the continuance of this contract to take over the powder factory. In that case and also on the termination of the contract the Government shall pay the agent for any extra improvements made which have been approved by the Government provided they are serviceable and are of the value represented at the time of taking over wear and tear etc. to be taken into consideration. In such a case payment of rent will only be made to the date of taking over. Everything found necessary to bring the powder factory in a position to provide for a consumption like it exists at present will not be considered as being extraordinary improvements.

5. The maximum prices referred to in Article 6 of the Regulations which the agent will be allowed to charge shall be reckoned as follows :—

For dynamite known as No. 1	..	..	£4	15	0
"	"	No. 2	..	..	£4 5 0
"	"	No. 3	..	..	£3 13 0

The agent shall be bound to charge no higher price for the supply of ammunition to the Government than that at which they can be imported by the latter from outside the country not inclusive of import duty and the Government reserves to itself the right to supply such ammunition to the burghers of this Republic in the manner followed up to now or as it may deem fit but only for their own use and not for trade or profit.

6. The agent undertakes to erect in the Republic the factories referred to in Article 10 of the Regulations at such places as may be decided by the agent after consultation with the Government and at the outside within two and a half years after the date of signing the contract dated 25th October 1893.

The Government undertakes if requested by the agent to apply to the Honourable the First Volksraad for an extension of time for erecting the factories that is to say as follows :—That within two and a half years after date of signing the contract dated 25th October 1893 the company shall erect a new factory

for the production of 40,000 cases of explosives per annum consisting of various kinds and quality in proportion to the requirements applied for in the country; whilst the further extension of factories will if necessary be decided by the Government from time to time at reasonable intervals.

The agent undertakes the payment every three months of the rent stipulated in Article 11 of the Regulations and the sum of 5s. on every case of dynamite sold together with the supply of properly certified statements as well as an amount of 20 per cent. of the surplus profits whilst the Government guarantees the agent exemption from any special taxation.

The profits are understood to be the balance remaining after deduction of all expenses wear and tear the usual "writings off" and an interest of 8 per cent. on the capital.

The agent shall be bound to keep proper books in the commercial style used in businesses of this description and the Government shall have the right at all times to have the books inspected by an official or person appointed for the purpose or by a commission of officials or persons.

A proper balance-sheet shall be made up yearly whereby in terms of this article the profit is defined.

A certified copy shall thereafter be sent to the Government and the amount due to the latter shall be paid out.

So long as no importation takes place under permit the agent shall pay to the Government a minimum of 2s. 6d. per case for the 20 per cent. of the surplus profits due to the Government even although 20 per cent. of the surplus profits may amount to less and the agent shall reduce by 5s. per case the maximum prices fixed in Article 5 of this contract.

In case the 20 per cent. amounts to more than 2s. 6d. per case the Government will naturally have the right to claim the full 20 per cent.

7. With reference to the letters patent described in Article 12 of the Regulations the Government undertakes that the following regulations shall apply:—

In case the Government should grant letters patent for the discovery of any explosive material such patent shall furnish to no one than the agent appointed to carry out these instructions the right to manufacture and to sell the material named therein within the boundaries of the South African Republic. Should the Government or the agent deem it desirable to take up or to bring into use a discovery of the kind and should the Government in that case be unable to make an agreement with the patentee owner or person entitled to the discovery then shall both parties (the Government and the patentee) name an arbitrator whilst the third arbitrator or umpire whose decision shall be final shall if necessary be appointed by the Chief Justice.

8. This agreement shall have effect within the territory of the South African Republic as at present existing or that may at any time become extended. If the South African Republic should in the future include districts or provinces in which provision has already been made respecting the materials or the matters which are the subject of this agreement then it shall depend upon the Government whether these instructions shall be extended to the new districts or provinces.

9. In case the agent of the Government is unable for a limited period to comply with the requirements in this Republic for explosives owing to explosions accidents disaster or other *force majeure* or cause outside the control and responsibility of the agent the Government can import the explosives until the agent is again in a position to supply the explosives required.

In that case the Government will give to the agent the preference in the importation of same.

The agent shall be bound to put the factories in working order again in the shortest possible time after any accident occurring as mentioned in this Article.

10. In case the Government imports any explosives as mentioned in Article 13 of the Regulations the preference will be given to the agent to import same for the Government.

11. All persons in the service of the agent are hereby exempted from personal commando or military service and service in the field in war time provided that their contracts are made under the condition that the Government shall have the right at any time if considered necessary to take over those contracts they binding themselves to work out their period of service with the Government.

12. During the time that the Government avails itself of Article 15 (a) of the Regulations then it will be bound to purchase from the agent the explosives required in terms of the prices named in this contract; the trade expenses to be deducted.

The Government will in such a case have the right to import such portion of what is required as the agent is unable to supply from his own factory.

A reasonable respite will be allowed to the agent before the Government makes use of Article 15 (f) of the Regulations.

In case the agent by his own contributory negligence culpability carelessness or neglect continues to be unable to carry out the conditions of this agreement after being admonished in writing to do so and after the lapse of a period of six weeks at the utmost the Government shall have the right to cancel this agreement.

If the neglect or carelessness is intentional the Government will have grounds for action for cancellation of this contract without any notice.

13. The agent may allow the sale of the articles shown in this agreement through the medium of one or more persons.

14. The agent of the Government is bound to pay the import duties on the machinery and implements required for the carrying out of this agreement.

15. The Government may introduce measures of precaution or safety with reference to the forwarding and storing of the said explosives.

The Government will not hinder the export of these explosives except for reasons of danger to the State or other weighty reasons.

16. With reference to Article 17 of the Regulations the Government makes the following arrangement with the agent to the exclusion of every one else :—

- (a) During the time that the factories to be erected by the agent are incomplete the Government will itself import all material and items necessary for the manufacturing of dynamite and other explosives in the stores of the agent according to particulars of prices quality and quantity approved by the Government with this understanding that this importation shall only extend to the period that the factory or factories are incomplete and in any case not longer than two years and a half or such extension of time as the Honourable the First Volksraad may approve according to Article 6 *alinéa* 2 of this contract.
- (b) The Government will place the above-named materials and items at the disposal of the agent for manufacture trade and sale in accordance with the above-mentioned Regulations and the agent will manufacture trade and sell on the order and on account of the Government under the above-named Regulations in so far as they are applicable hereto.
- (c) The agent will send statements to the Government each month giving particulars of manufacture trading and sales and paying the Government all moneys received for sales from which after deduction of 5s. per case and the amounts expended by the Government for the materials imported for same the balance will be paid out to the agent.

17. Within eight days after the signing of this contract the agent will be bound for the due performance of the undertaking to erect the factories herein mentioned and for the carrying out of the contract until the factories are properly erected and in working order to find security for an amount of £30,000 which shall include all his existing assets in this country upon which bonds shall be properly passed.

18. Any differences regarding the meaning or interpretation of this agreement which may arise between the parties to same shall be decided by arbitrators and not by an ordinary judge and shall bind the parties definitely as in a superior court from whose award there is no appeal.

In case the parties cannot come to an agreeable understanding with reference to the interpretation of this agreement the one party will give written notice to the other stating the disputed point existing in the agreement and that they will invoke the decision of the arbitrators.

The parties will then each appoint an arbitrator and the two latter will appoint a third.

These decisions shall at the utmost be given within three months.

On the non-appointment of an arbitrator by one of the parties or undue delay in doing so or in case of disagreement of the two appointed over the choice of a third the appointment will be made by the Chief Justice or his substitute in the High Court of this Republic and the parties will be heard or notified to appear.

Thus done and contracted at Pretoria South African Republic this 24th day of May 1894 in the presence of the subscribed witnesses.

DR. W. J. LEYDS,
State Secretary.
L. G. VORSTMAN.

Witnesses :

C. G. SANDBERG.
P. L. A. GOLDMAN.

Registered in the Register of Deeds at Pretoria in Book C No. 1 folio 431 on the 25th day of May 1894.

A. D. LORENTZ,
Acting Registrar of Deeds.

A true translation.

P. K. BENNINK JAUSSENIUS,
Sworn Translator.

(3.)

TRANSLATION.]
No. 607.]

[R15608/98.

GOVERNMENT NOTICE.

For the information of the public the following agreement between the Government of the South African Republic and L. G. Vorstman is hereby published.

F. W. REITZ,
State Secretary.

Government Buildings,
Pretoria, 22nd December, 1899.

MEMORANDUM OF AGREEMENT

BETWEEN THE

GOVERNMENT OF THE S.A.R. AND L. G. VORSTMAN.

DATED 20TH DECEMBER, 1899.

From "Government Gazette," 27th December, 1899.

MEMORANDUM OF AGREEMENT

Containing Amendments of Article 6 of the Agreement, dated 24th May, 1894, between the Honourable Government of the South African Republic and L. G. Vorstman.

The Honourable Government of the South African Republic, acting with the advice and consent of the Executive Council (*vide* Article 959 of Resolution of the Hon. First Volksraad, dated 25th August, 1899), represented by the Honourable Mr. Francis William Reitz, in his capacity of State Secretary of the said Republic, the said Francis William Reitz being duly authorized by Article 983 of Resolution of the Executive Council, dated 22nd November, 1899, hereinafter called "the Government", of the one part, and the "Zuid Afrikaansche Fabrieken voor Ontploffbare Stoffen", Limited, hereinafter called "de maat-chappij", at present holder of the contract, dated 24th May, 1894, and represented by Lambertus Gerhardus Vorstman, the above-named Lambertus Gerhardus Vorstman being duly authorized by a resolution of the board of directors of the company, dated 26th September, 1899, of the other part;

Whereas, seeing that by Article 959 of Resolution dated 25th August, 1899, the Honourable the First Volksraad have authorized the Honourable Government to amend in terms of said resolution a certain contract, dated 25th May, 1894, of which the company is the present holder, as shall more fully appear from a copy of the said Resolution attached hereto and marked "A", and

Seeing that the said Volksraad Resolution lays down amongst other things that "with prices of 75s. per case of 50 lb. net for Dynamite "No. 1, and 97s. 6d. per case of 50 lb. net for Spring Gelatine, these prices to

“ be subject to what is laid down in Article 7 of the Regulations, and under express reservation of the rights of the Government as recognized in the Regulations; to amend Article 11 of these Regulations so that ‘ 5s.’ shall be replaced by ‘ 17s. 6d.’, and the last words in the Article: ‘ Besides which the Government shall have the right to 20 per centum of profits’ shall be cancelled.”

Now, therefore, the parties hereby agree and contract as follows, to wit:—

Article 6 of the said contract of the 24th May, 1894, is hereby cancelled and replaced by a new Article reading as follows:—

Article 6.—The agent undertakes to pay to the Honourable Government every three months the rent stipulated in Article 11 of the Regulations (as now amended by the Honourable Volksraad by Resolution of the 25th August, 1899, Article 959), and the sum of 17s. 6d. on every case of dynamite sold, together with the handing in of duly certified statements, the Government granting the agent exemption from any special taxation.

The Company further undertakes to conform to the further stipulations of the said First Volksraad Resolution and to carry out the same with reference to the prices mentioned in the extract of the said First Volksraad Resolution mentioned in this contract.

The reduced prices to come into effect from the date of the signing of this contract.

Thus done at Pretoria, on the 20th day of December, 1899, in the presence of the subscribed witnesses.

F. W. REITZ,
State Secretary.
L. G. VORSTMAN.

As Witnesses:

WM. THEO. S. MORKEL.
H. KUIPERS.

Registered on the 20th December, 1899, in the Register of Deeds, Book C II, folio 454.

J. C. MINNAAR,
Registrar of Deeds.

A true translation.

P. K. BENNINK JAUSSENIUS,
Sworn Translator.

No. 61 of 1903.]

[Promulgated 31st July, 1903.]

ORDINANCE

TO APPLY A SUM OF MONEY FOR THE SERVICE OF THE YEAR
ENDING THE 30TH DAY OF JUNE 1904.

Assented to 27th July, 1903.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows ;

Public
revenue to be
charged with
£3,588,896.

How to be
applied.

Not to be
applied
otherwise
than as
granted.

The Treasurer
to make
payments
under warrant
of the
Lieutenant-
Governor.

Title.

1. The public revenue of this Colony is hereby charged toward the service of the year ending the 30th day of June 1904 with a sum of three million five hundred and eighty-eight thousand eight hundred and ninety-six pounds.

2. The money granted by this Ordinance shall be applied to the purposes and services set forth in the schedule annexed hereto.

3. The moneys granted by this Ordinance shall not be issued or applied to any use intent or purpose other than the particular services to which the said amounts have been granted respectively by this Ordinance.

4. The Colonial Treasurer being duly authorized thereto by warrant under the hand of the Lieutenant-Governor shall issue and pay from time to time such sums of money as shall be required for the purposes hereinbefore mentioned not exceeding in the whole the sums respectively in that behalf specified and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant ; and the receipts of the persons to whom such sums shall have been so paid shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given.

5. This Ordinance may be cited as The Appropriation Ordinance (No. 3) 1903.

SCHEDULE
OF ESTIMATED EXPENDITURE FOR THE YEAR 1903-04.

No. of Vote.	Title of Vote.	Estimate 1903-04.
I	Pensions and Gratuities	£4,000
II	His Excellency the Lieutenant-Governor	12,752
III	Executive and Legislative Councils	16,772
IV	Colonial Secretary	46,212
V	Public Works—Establishment and Maintenance	411,243
VI	Public Works—New Works	433,767
VII	Education	306,231
VIII	Public Health	69,489
IX	District Hospitals and Dispensaries	63,283
X	Pretoria Hospital	16,585
XI	Government Printing Office	72,171
XII	Grants-in-Aid	98,396
XIII	Attorney-General	41,236
XIV	Commissioner of Patents	5,565
XV	Registrar of Deeds	11,446
XVI	Master of the Supreme Court	11,490
XVII	Superior Courts	45,108
XVIII	Prisons	124,935
XIX	Magistrates	142,451
XX	Police	370,203
XXI	Lunatic Asylum	20,148
XXII	Native Affairs	114,915
XXIII	Treasury	23,683
XXIV	Revenue Offices	9,564
XXV	Audit Office	16,616
XXVI	Customs	47,893
XXVII	Postal and Telegraph Department	414,259
XXVIII	Transport and Immigration	20,000
XXIX	Transvaal Volunteers	200,000
XXX	Mines Department	128,215
XXXI	Land Department	49,080
XXXII	Irrigation and Water Supply	45,580
XXXIII	Surveys	27,563
XXXIV	Agriculture and Forests	134,845
XXXV	Census	15,000
XXXVI	Miscellaneous	18,200
	Total Ordinary Expenditure	£3,588,896

No. 62 of 1903.]

[Promulgated 31st July, 1903

ORDINANCE

TO CONFER FURTHER POWERS ON THE MUNICIPALITY OF
JOHANNESBURG.

Assented to 27th July, 1903.

WHEREAS the town council of Johannesburg is invested with certain powers under Proclamations Nos. 16 of 1901 39 of 1902 and Ordinance No. 43 of 1903 respectively ;

And whereas it is desirable to add to and vary such powers with respect to the levying of special rates for tramway purposes and to the erection of hospitals for infectious diseases and subscriptions to charitable and other institutions and other matters incidental thereto ;

And whereas it is desirable to make provision for the vesting in the said town council of all the assets of the late Stadsraad as constituted under Law No. 9 of 1899 ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

Titles.

1. This Ordinance shall be read as one with the Johannesburg Municipal Proclamation 1901 and the Johannesburg Municipality Amendment Proclamation 1902 and may be cited as the Johannesburg Municipality Further Powers Ordinance 1903 and this Ordinance and the said Proclamations and Proclamation (Transvaal) No. 16 of 1901 Proclamation (Transvaal) No. 29 of 1901 the Stadsraad (Johannesburg) Liabilities Liquidation Ordinance 1902 the Johannesburg Municipality (Duties of Chairman) Ordinance 1902 Ordinance No. 41 of 1902 the Johannesburg Borrowing Powers Ordinance 1903 the Johannesburg Municipality Special Borrowing Powers Ordinance 1903 the Johannesburg Municipality Borrowing Powers Amendment Ordinance 1903 the Johannesburg Municipality Plans of Townships Ordinance 1903 and the Johannesburg Insanitary Area Expropriation Ordinance 1903 may be cited together as the Johannesburg Municipal Statutes 1901 to 1903.

SPECIAL TRAMWAY RATES.

2. *Repealed by Ordinance No. II (Private), 1906, section one.*

Expense of
outside
tramways to
be within
Ordinance
No. 43 of
1903.

3. *Repealed by Ordinance No. II (Private), 1906, section one.* Prescribes certain conditions precedent before council can construct tramways.

HOSPITALS AND CHARITABLE INSTITUTIONS.

4. *Repealed by Ordinance No. II (Private), 1906, section one.* Power to erect and maintain hospitals for infectious diseases.
5. *Repealed by Ordinance No. II (Private), 1906, section one.* Power to contribute towards the establishment and maintenance of certain institutions.

ASSETS OF THE LATE STADSRAAD.

6. All and singular the property rights and assets belonging to or vested in the late Stadsraad as constituted under Law No. 9 of 1899 shall be and are hereby vested in the council for all the right title interest claim or demand formerly had possessed or enjoyed therein by such Stadsraad provided that nothing herein contained shall be deemed to affect or modify the provisions of section *two* of the Stadsraad (Johannesburg) Liabilities Liquidation Ordinance 1902. Assets in schedule to be vested in the council.

7. The Registrar of Deeds and the Registrar of Mining Rights and any other official charged with the registration of documents affecting the title to property shall upon production of the usual documents insert the name of the council in place of the said Stadsraad or their predecessors in office in all registers of property under his or their control and endorse such alteration of name on all title deeds or other documents affecting the title to property and on all bonds and other hypothecations filed of record in his or their office or offices and on all such title deeds documents and hypothecations in the hands of parties as and when produced to him upon payment of the prescribed fee. Alteration of registers and documents and exemption from transfer duty.

SCHEDULE.

TRAMWAY ROUTES REFERRED TO IN SECTION TWO.*

1. Market Street north along Troye Street and Twist Street across the railway by a new bridge continuing along Twist Street to Goldreich Street on Hillbrow.
2. Twist Street opposite Joubert Park east along Bok Street Beit Street thence north along Erin Street to Bertrams Road.
3. Fordsburg Railway Station east through Main and Market Streets thence north-east along Siemert Road to the Railway Bridge.

* Section *two* is repealed.

4. Government Square east along Main Street across Natal Spruit by a new bridge across the railway in Main Street to Berg Street.

5. Government Square north along Eloff Street to Park Station thence east along Noord Street to Twist Street.

6. Main Street south along Von Welligh Street to Grahamstown Street adjacent to the mining ground.

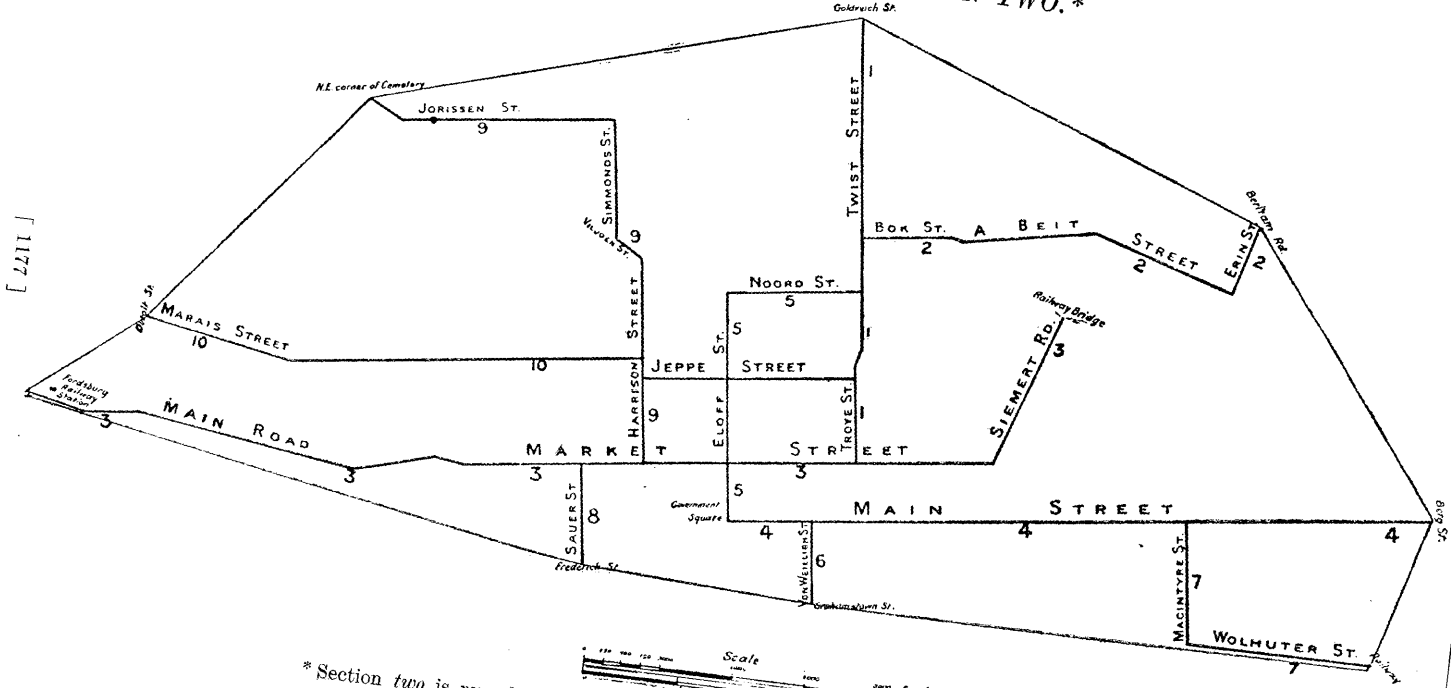
7. Main Street south along Macintyre Street turning east down Wolhuter Street as far as the railway.

8. Market Street south along Sauer Street through Marshall Square to Frederick Street against the mining ground.

9. Market Street north along Harrison Street across the railway thence north-west *via* Viljoen Street Simmonds Street and Jorissen Street to the north-east corner of the Cemetery.

10. Troye Street west *via* Jeppe Street through the extended Bree Street and along Marais Street to Dutoit Street.

PLAN REFERRED TO IN SECTION TWO.*



* Section two is repealed; see, however, Ordinance II (Priv.), 1906, section sixty-two.

Ord. No. 62.]

Municipality Further Powers.

[A.D. 1903.

[1177]

No. 63 of 1903.]

[Promulgated 7th August, 1903.]

ORDINANCE

TO REGULATE THE TRADING IN DIAMONDS.

Assented to 30th July, 1903.

WHEREAS it is expedient to make provisions regulating the trade in diamonds;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows.

CHAPTER I.

WHO MAY DEAL IN DIAMONDS.

Possession of uncut diamonds.

1. It shall not be lawful for any person save as in this Ordinance is excepted to have in his possession any rough or uncut diamond; and any such person as aforesaid who shall be found in the possession of any rough or uncut diamond and shall be unable to account satisfactorily for or prove his rights to the possession of such rough and uncut diamond or to produce his proper permit for the same in accordance with the provisions of this Ordinance shall on conviction be liable to the penalties provided by the next succeeding section.

Prohibition against and penalties for buying or dealing in rough or uncut diamonds.

2. It shall not be lawful for any person save as in this Ordinance is excepted to buy deal in or receive by way of barter pledge or otherwise either as principal or agent any rough or uncut diamond or to be an accessory to such buying dealing in or receiving unless such person so buying dealing in or receiving as aforesaid shall be duly licensed or authorized under this Ordinance to deal in diamonds either as buyer or seller broker or factor or shall be duly licensed to carry on the trade or business of a diamond cutter or unless such person buying dealing in or receiving as aforesaid shall be a banker within the Colony.

Any person convicted of contravening this section shall be liable to a penalty not exceeding one thousand pounds or to imprisonment with or without hard labour for any period not exceeding fifteen years or to both such penalty and imprisonment.

Imprisonment when fine not paid.

3. Where a fine has been inflicted on any person for contravening any of the provisions of this Ordinance it shall be lawful for the court to sentence such person to an additional term of imprisonment without hard labour for a period not exceeding one year unless such fine shall have been sooner paid provided that where any person shall have been in the first instance sentenced to

imprisonment in addition to any fine such further period of imprisonment shall take effect from the termination of the first sentence and shall not exceed the term to which he was originally sentenced.

4. (1) It shall not be lawful save as hereinafter excepted for any person not being a banker licensed diamond dealer or a registered claimholder or the duly accredited and registered agent of a registered claimholder or the holder of a washing permit or prospecting licence or otherwise duly authorized under the provisions of this Ordinance to sell offer or expose for sale or to barter pledge or in any way either as principal or agent dispose of or deliver any rough or uncut diamond or diamonds; provided that it shall not be lawful for such banker licensed diamond dealer or other duly authorized person to sell offer or expose for sale barter pledge or in any way dispose of or deliver any rough or uncut diamond unless such diamonds shall be actually the property or in the lawful possession of such banker or diamond dealer or duly authorized person; and provided further that it shall not be lawful for any such registered claimholder or the duly accredited and registered agent of a registered claimholder or the holder of a washing permit or prospecting licence to sell offer or expose for sale or barter pledge or in any way dispose of or deliver any rough or uncut diamond unless such rough or uncut diamond shall have been obtained or found in soil taken from any claim registered in the name of such claimholder or in the soil or ground mentioned and specified in such washing permit or in ground not being a mine or alluvial digging worked under such prospecting licence.

Who may
sell and deal
in diamonds.

(2) Any person convicted of contravening this section shall be liable to the penalties provided by the *second* section of this Ordinance. The onus of proof of lawful possession within the meaning of this section of any such diamond as aforesaid shall in all cases rest on such banker diamond dealer registered claimholder duly accredited and registered agent of a registered claimholder holder of a washing permit and prospecting licence or otherwise duly authorized person as aforesaid.

5. (1) Any person being the proprietor of any landed property which has not been proclaimed a mine or alluvial digging who may find win or pick up any rough or uncut diamond or diamonds upon such farm or landed property shall within fourteen days thereafter make a solemn declaration of the fact and upon production of such declaration the resident magistrate of the district shall grant a permit to such person to hold or sell or dispose of such diamond. And in the case of a company being the proprietor of any such landed property the secretary manager or other duly authorized representative of such company whose name shall be registered in the office of the resident magistrate of the district in which such landed property is situate shall make the declaration aforesaid.

Persons find-
ing diamonds
on private
property to
make declara-
tion within
fourteen days.

(2) Any person contravening the provisions in this section contained for declaring such finds as aforesaid shall be liable upon conviction to a penalty not exceeding one hundred pounds or in default of payment to be imprisoned with or without hard labour for a period not exceeding one year; provided that any person who shall sell offer or exchange or barter pledge or in any way dispose of or deliver any rough or uncut diamond found won or picked up on any such landed property without the permit aforesaid shall be liable to the penalties provided by the *second* section of this Ordinance.

Persons competent to purchase not to buy from persons incompetent to sell.

6. Any banker or licensed diamond dealer registered claimholder accredited and registered agent of a registered claimholder holder of a washing permit or prospecting licence dealer in or cutter of diamonds buying or receiving by way of barter pledge or otherwise either as principal or agent any rough or uncut diamond from any person or in any way dealing with the same with any person not being a banker or licensed dealer or cutter of diamonds or a registered claimholder or a registered and accredited agent of a registered claimholder or not having a washing permit or prospecting licence or permit under the last preceding section shall be liable on conviction to the penalties in the *second* section of this Ordinance provided and shall in addition forfeit any licence or permit which such person may hold and any right of renewal of the same for such time as the court may direct and no such person shall thereafter be registered as the agent of any claimholder.

Licensed dealers to adhere to terms of licence.

7. Any licensed diamond dealer or diamond cutter in any way dealing in rough or uncut diamonds otherwise than in the manner specially authorized by the licence held by him shall on conviction thereof be liable to the penalties in the *second* section of this Ordinance provided and shall in addition forfeit his licence and any right of renewal of the same for such time as the court may think fit and direct.

No dealings allowed between sunset and sunrise or on Sundays.

8. It shall not be lawful for any banker or licensed diamond dealer to buy deal in or receive by way of barter pledge or otherwise or to sell barter pledge or in any way for the purposes of trade dispose of or deliver or for any licensed diamond broker or factor to act as such diamond broker or factor or in any way to negotiate the purchase or sale of diamonds between other persons or act as agent or factor between buyer or seller in respect of any rough or uncut diamond or diamonds between sunset and sunrise or on Sundays; and every person contravening this section shall incur a penalty not exceeding one thousand pounds and in default of payment shall be liable to be imprisoned with or without hard labour for any term not exceeding one year and shall in addition be liable to forfeit any licence which such person may hold and any right of renewal of the same for such time as the court may direct.

9. If in any proceeding under this Ordinance the court has to be satisfied either that the accused or any witness or other person is not licensed or authorized to deal in diamonds within the meaning of the section under which such accused person is being tried such accused person witness or other person shall be deemed to be unlicensed or unauthorized unless the accused person shall prove to the satisfaction of the court that he or such witness or other person is duly authorized or licensed as aforesaid.

Burden of proof of being licensed.

10. It shall not be lawful for any person to export or import rough or uncut diamonds out of or into this Colony unless such importer or exporter shall be licensed or authorized to deal in diamonds or unless such person shall be a banker within the Colony and every person convicted of contravening this section shall be liable to the penalties provided by the *second* section of this Ordinance.

Restrictions on exporting and importing rough or uncut diamonds.

11. (1) It shall be lawful for the chief officer of the police of any district whenever he shall have good cause to believe that any parcel or package is being despatched through the post office containing rough or uncut diamonds which have not been entered according to the provisions of this Ordinance in the register of the person despatching them as aforesaid or of which he may at any time have become unlawfully possessed to stop or cause to be stopped such parcel or package as aforesaid at any post office within the Colony either during the transit of such parcel or package or otherwise.

Right of police to detain post packages supposed to contain diamonds sent illegally.

(2) The chief officer of police shall thereupon by a notice in writing served personally on the person who shall have despatched such parcel or package as aforesaid call upon such person as aforesaid to attend either personally or by an agent duly authorized by him in writing at a time and place to be named in such notice for the purpose of being present at the opening and examination of such parcel or package and thereupon on the day and at the place appointed in such notice such chief officer of the police of the district as aforesaid shall proceed to open and examine such parcel or package and if there shall be discovered therein any rough or uncut diamonds which shall not have been duly entered in the register of such person as aforesaid in accordance with the provisions of this Ordinance or for the possession of which he is not able satisfactorily to account such person shall on conviction be liable to the penalties provided in the *second* section of this Ordinance and all diamonds contained in such parcel or package shall thereupon be forfeited and sold as hereinafter provided.

12. Whenever any person shall find or pick up any rough or uncut diamond on any ground or place not being the claim or depositing floor of such person nor in any ground or place worked by him under a prospecting licence he shall forthwith take and deliver such diamond to the resident magistrate of the district

Duty of person finding uncut diamonds outside his claim.

who shall thereupon advertise the same in the local newspapers and if within twenty-one days from the date of such advertisement the owner of such diamond shall not have been discovered or in case no person shall have been able to prove to the satisfaction of the resident magistrate his right to have such diamond delivered to him the resident magistrate shall order the same to be sold and the proceeds thereof to be paid into the Colonial Treasury; provided always that a sum calculated at the rate of thirty-three and one-third per cent. on the amount realized by such sale shall in all cases be paid to the person finding such diamond as aforesaid and provided always that any person so finding or picking up any rough or uncut diamond as aforesaid who shall fail or neglect to deliver the same to the resident magistrate as provided by this section shall on conviction thereof be liable to a fine of five hundred pounds sterling or to imprisonment with or without hard labour for a period not exceeding five years.

Powers of entry into and search of premises where stones suspected to be concealed

13. (1) It shall be lawful for any constable or policeman when thereto authorized by warrant granted under the hand of any resident magistrate or chief officer of police which warrant such magistrate or chief officer is hereby authorized and required to grant upon sufficient cause shown to his satisfaction to enter into and upon and search any stand buildings and premises where he may have good cause to suspect that any rough or uncut diamonds are unlawfully concealed and any person then being upon such stand buildings or premises; and at any time in any highway street or public place to arrest without warrant and search any person whom he may have good cause to suspect of having on his person or in his possession any rough or uncut diamonds unlawfully obtained or without having a proper permit for the same and to stop and search any vehicle in or upon which he shall have good cause to suspect that any such diamonds are concealed or being carried away and to search any person then being in or upon such vehicle.

(2) If there be found any rough or uncut diamonds in or upon such stand buildings or premises or upon such person or vehicle the said constable or policeman shall seize and detain such diamonds and arrest any person then being in or upon such stand building premises or vehicle who may reasonably be suspected of being the possessor of or interested in such diamonds and as soon as may be bring such person before any resident magistrate or justice of the peace.

(3) If the person arrested as aforesaid shall at the trial fail to produce a proper permit for such diamonds or to account for the possession thereof to the satisfaction of the court before which such person shall be tried such person shall on conviction be liable to the penalties provided by the *second* section of this Ordinance and on every conviction under this section any diamond found on

such stand or in such building or premises or on such person cart or other conveyance as aforesaid may be forfeited and the court may order the same to be sold; provided that if no conviction takes place and such person be able to prove a *bona fide* right to the possession of such diamonds or to produce a proper permit for the same the said diamonds or the value thereof shall be restored or paid to such person.

14. No person who by the order in writing of any court or resident magistrate shall sell any rough or uncut diamonds seized detained or forfeited under any of the provisions of this Ordinance shall be liable in respect of such sale to any of the penalties provided for in this Ordinance.

Person selling diamonds by order of court not to be liable to penalties.

15. All fines recovered and the proceeds of all diamonds forfeited and sold under the provisions of this Ordinance shall be paid into the Colonial Treasury.

Applications of fines.

16. Every person who shall at the time of the taking effect of this Ordinance have in his possession any rough or uncut diamonds which shall not be registered under any existing law may within three months thereafter obtain from the resident magistrate of the district a permit stating the number and weight of such diamonds and after the expiration of such period of three months such permit shall upon any prosecution be the sole evidence of the lawful possession of such diamonds.

Persons having uncut diamonds in their possession not registered at the time of this Ordinance taking effect.

CHAPTER II.

LICENCES PERMITS AND REGISTERS.

17. It shall not be lawful for any person to deal in rough or uncut diamonds either as buyer seller exporter or importer or to carry on the business or trade of a diamond broker or factor or the business or trade of a diamond cutter unless such person shall be duly licensed for such purposes as aforesaid either as dealer broker or factor or diamond cutter as aforesaid and any person contravening this section shall be liable to the penalties provided by the *second* section of this Ordinance.

Persons requiring licences.

*18. On every licence to deal in rough and uncut diamonds within this Colony there shall be paid to the receiver of revenue the sum of thirty pounds for a yearly licence or ten pounds for a quarterly licence and every such licence shall be in the form A set forth in the schedule; provided that all such licences as are quarterly shall no matter when taken out terminate on the last day of the current quarter such quarters ending respectively on the thirty-first day of March thirtieth day of June thirtieth day of September and thirty-first day of December in each year; and all such licences as are annual shall no matter when taken out expire on the thirty-first day of December then next.

Fees on licences of dealers.

* As to licence fees see now Act No. 15, 1909, section *one* (1), and Second Schedule thereto (Part I).

Fees on
brokers'
licences.

*19. On every licence to trade as a diamond broker or factor there shall be paid the sum of fifteen pounds for a yearly licence or five pounds for a quarterly licence and such licence shall be in the form C set forth in the schedule; provided that all such licences shall terminate and expire as provided for and on the days set forth in the last preceding section.

Persons
applying for
licences to
deal to
produce
certificate
of fitness.

20. It shall not be lawful for any revenue officer to issue any licence to deal in rough or uncut diamonds unless the persons so applying for such licence shall when applying for the same produce and lodge with such officer a certificate under the hand of the resident magistrate of the district in the form B set forth in the schedule; provided that it shall not be lawful for any resident magistrate to sign or issue such certificate until the person applying for such certificate shall together with two sufficient sureties have entered into a recognizance in the form G set forth in the schedule and unless the office in respect of which the licence is sought shall be in localities or limits † from time to time defined by notice in the *Gazette* under the hand of the Commissioner; provided further that it shall not be lawful for any such resident magistrate to grant to any person a certificate for a licence to deal in rough or uncut diamonds or to carry on the trade or business of a diamond broker or cutter of diamonds who shall at the time of making application for such certificate be the holder of or interested in any licence to deal in intoxicating liquors or in any licence to keep a store or eating-house for natives or who shall have been convicted of any of the offences in this Ordinance; provided however that in the case of a licenced person who shall have been convicted and sentenced to forfeit his licence for any period it shall be lawful for the resident magistrate to grant to such person a certificate as aforesaid after the period shall have elapsed for which the licence of such person has been forfeited.

Broker
applying to
produce
certificate
of fitness.

21. It shall not be lawful for any revenue officer to issue any licence to trade as a diamond broker or factor unless the person applying for such licence shall when applying produce and lodge with such officer a certificate under the hand of the resident magistrate of the district in the form D set forth in the schedule; and it shall not be lawful for any resident magistrate to grant such certificate to or for any person not of full age who shall not either produce authority from his parent or guardian to trade as a diamond broker or factor (in which case such parent or guardian shall be a party to his recognizance hereinafter mentioned as assisting in such) or make a solemn declaration that he is not under tutelage nor in any case until the person applying for such certificate together with two sureties shall have entered into a recognizance in the form G set forth in the schedule.

* As to licence fees see now Act No. 15, 1909, section *one* (1), and Second Schedule thereto (Part I).

† Localities or limits were fixed under this section and under section *twenty-three* by Govt. Notices Nos. 837, 1903 (*Gazette*, 14/8/03); 1022, 1903 (*Gazette*, 18/9/03); 488, 1908 (*Gazette*, 29/5/08).

* 22. On every licence to carry on the business or trade of a diamond cutter there shall be paid the sum of ten pounds for a yearly licence or three pounds ten shillings for a quarterly licence and every such licence shall be in form E set forth in the schedule provided that all such licences as are quarterly shall no matter when taken out terminate on the last day of the current quarter such quarters ending respectively on thirty-first day of March thirtieth day of June thirtieth day of September and the thirty-first day of December of each year; and all such licences as are annual shall no matter when taken out expire on the thirty-first day of December then next ensuing.

Licences of diamond cutters.

23. It shall not be lawful for any revenue officer to issue a licence to carry on the trade or business of a diamond cutter unless the person or persons applying for such licence shall when applying produce and lodge with such officer a certificate under the hand of the resident magistrate of the district in the form F set forth in the schedule and it shall not be lawful for any resident magistrate to sign or issue such certificate until the person or persons applying for such certificate shall together with two sufficient sureties have entered into a recognizance in the form G set forth in the schedule and unless the place of business in respect of which the licence is sought shall be in localities or limits† which shall from time to time be defined by notice in the *Gazette* under the hand of the commissioner.

Diamond cutters to produce certificate of fitness before being licensed.

24. Any licence or permit which may be obtained by concealing or misrepresenting matters which if known would have prevented the issue of any certificates under this Ordinance for any of the reasons aforesaid shall upon proof of such concealment or misrepresentation before any resident magistrate be forfeited and the person who by such concealment or misrepresentation shall have obtained such licence or permit shall upon conviction be liable to a penalty not exceeding five hundred pounds or to be imprisoned with or without hard labour for any period not exceeding five years.

Licences obtained by concealment or misrepresentation.

25. Any licensed diamond cutter may without permit as in the following section provided receive for the purpose of his trade any rough or uncut diamond from any person not licensed or authorized as in the *sixth* section of this Ordinance provided on the production by such person of a written authority or permit from any resident magistrate as in the following section of this Ordinance is provided anything in this Ordinance to the contrary notwithstanding.

Diamond cutter may receive stones from unlicensed persons under magistrate's permits.

26. It shall be lawful for any resident magistrate to give any person a permit bearing a stamp of the value of one shilling to be affixed thereto by such person and to be cancelled by the resident magistrate to buy sell deliver or receive any diamonds such permit

Issue of permits.

* As to licence fees see now Act No. 15, 1909, section *one* (1), and Second Schedule thereto (Part I).

† See note to section *twenty*.

to set forth clearly the person from whom and to whom such diamond or diamonds is or are to be bought or received sold or delivered and to be in the form H set forth in the schedule ; provided that no such permit shall be granted unless the applicant shall make a solemn declaration that such purchase sale delivery or receiving is not for the purpose of trade and in the case of an applicant for a permit to sell or deliver that such applicant is the lawful owner of such diamond together with a statement showing the lawfulness of his ownership ; such declaration shall be in the form I or J as the case may be set forth in the schedule ; and provided further that the magistrate shall keep a record of all such permits and of all such declarations as aforesaid ; and provided further that for the purposes of this section the word " trade " shall not be construed as including the trade or business of a diamond cutter.

Washing
permits.

27. (1) It shall be lawful for the resident magistrate to issue to any person save as hereinafter excepted a special permit bearing a stamp of the value of one shilling to be affixed thereto by such person and to be cancelled by the resident magistrate to sell or dispose of any diamonds that shall have been found by such person in ground or soil bought and washed by him ; and such permit shall be called a washing permit and shall be in the form K contained in the schedule and shall set forth clearly the name of the person from whom the ground or soil in which such diamonds shall have been found was bought or received together with the date of such purchase the number of loads of the said soil so bought or received the price paid for the same and the number of loads thereof washed and such permit shall also show the total weight of the parcel of diamonds for which the permit is granted and shall specify the number of diamonds of the weight of ten carats and upwards contained in such parcel and further the weight of any single stone of the value of one hundred pounds and upwards.

(2) No such permit shall be granted unless the applicant shall make a solemn declaration that such diamonds were actually found by him in such ground or soil as aforesaid and such declaration shall be made in the form L set forth in the schedule.

(3) The resident magistrate shall keep a record of all such washing permits and of all such declarations as aforesaid ; and no such washing permit shall be issued to any person to whom the resident magistrate would not have power to issue a certificate under the *twentieth* section of this Ordinance ; and such permit shall only be available in the district over which the resident magistrate so issuing such permit shall have jurisdiction.

Permits to
police and
detectives.

28. It shall be lawful for any resident magistrate to grant to the chief officer of the police of the district or a person duly authorized in writing by him to receive the same a permit to buy or receive one or more rough and uncut diamonds such permit

to be in the form H set forth in the schedule and every such resident magistrate as aforesaid shall keep a record of all such permits so granted as aforesaid.

29. Every licensed diamond dealer or cutter of diamonds shall have an office or place of business at some place to be described in his licence and shall have affixed on some conspicuous place on the outside of and over or by the side of the outer door of the place in which he may have such office or place of business his name at full length (or where there are partners the name and style of the firm or partnership) and after such name or style the words "licensed diamond dealer" (or "dealers") or "licensed diamond cutter" (or "cutters") as the case may be; such name or style and such description shall be publicly visible and legible in letters at least two inches in length and every licensed diamond dealer or cutter contravening this section shall incur a penalty not exceeding twenty pounds for the first offence and for a subsequent offence within two years a penalty not exceeding fifty pounds and shall in any case be liable to forfeit any licence held by him or any right of renewal of the same for such period as the court may direct.

Buyers and cutters to have place of business mentioned in licence.

30. It shall not be lawful for any diamond buyer or seller or cutter to buy sell deal in or receive by way of barter pledge or otherwise any rough or uncut diamond otherwise than in his said office or place of business and any such licensed person as aforesaid convicted of contravening this section shall be liable to the penalties provided in the preceding section of this Ordinance.

Transactions to be confined to such place of business.

31. It shall not be lawful for any licensed diamond buyer or cutter to remove his office or place of business at which he is licenced to deal in or carry on his business as a cutter of diamonds to another place unless the revenue officer shall endorse on the licence of such diamond dealer or cutter a certificate that such licence is transferred to the place to which such diamond dealer or cutter desires to move his office or place of business; and it shall not be lawful for any revenue officer to give such certificate unless the resident magistrate shall have first endorsed on such licence that the place to which it is sought to be transferred is a fit and proper place for the office of or place of business of a licensed diamond dealer or cutter and any licensed diamond buyer seller or cutter contravening this section shall be liable to the penalties provided by the *thirty-fifth* section of this Ordinance.

Licences of persons removing to be endorsed by revenue officer.

32. (1) Every licensed broker or factor in every case in which he concludes a contract of purchase or sale of rough or uncut diamonds for or on account of any person employing him as such broker or factor shall deliver to the seller a proper and sufficient broker's bought note and shall also deliver to the purchaser a proper and sufficient broker's sold note; and every registered claimholder accredited and registered agent of a registered claimholder

Broker's buyer's and seller's notes.

or holder of a washing permit or prospecting licence shall in every case in which a sale is effected by him personally pass a seller's note and receive a buyer's note or otherwise as the case may be ; and every such broker's seller's and buyer's note shall respectively set forth all the parties to the transaction in the form M set forth in the schedule and shall set forth the weight of the parcel sold the number of diamonds of the weight of ten carats and upwards and the price per carat and the amount for which such parcel was sold ; provided that every diamond above the value of one hundred pounds shall be separately described in every such broker's seller's and buyer's note ; and provided also that every such broker's seller's and buyer's note shall be certified as correct by the licensed dealer disposing of the same.

(2) Every person convicted of any offence against this section shall be liable to a penalty not exceeding five hundred pounds and in default of payment to be imprisoned with or without hard labour for a period not exceeding five years and shall in addition be liable to forfeit any licence held by him and any right of renewal of the same for such period as the court may direct.

All authorized
persons
to keep
records of
transactions.

33. (1) Every banker dealer importer exporter broker factor cutter of diamonds registered claimholder accredited and registered agent of any registered claimholder or holder of a washing permit or prospecting licence or a permit issued under the *fifth* section of this Ordinance shall keep a true and correct register in the English language of all their respective dealing in diamonds and in which they shall enter or cause to be entered within twenty-four hours of every transaction

- (a) the date of all purchases sales exports imports and receipts ;
- (b) the name of consignor cutter prospector seller buyer and broker or consignee or owner ;
- (c) total weight of each parcel ;
- (d) the number of stones of ten carats and upwards in each parcel ;
- (e) the price received or paid or the duty on import ;
- (f) the weight of any single stone found received bought sold cut or consigned (separately or with others) the buyer's valuation of which exceeds one hundred pounds.

(2) Every such register shall be in the form N set forth in the schedule and any person so required to keep a register who shall be convicted of neglecting or failing to keep a proper register as required by this Ordinance shall be liable to a penalty not exceeding five hundred pounds and in default of payment to be imprisoned with or without hard labour for any period not exceeding five years or to both such fine and imprisonment and shall in addition forfeit any licence held by him or any right of renewal of the same for such period as the court may direct.

34. Every person required by this Ordinance to keep a register shall within three days after the expiration of each month forward to the chief officer of the police of the district a true copy of such register for the previous month together with a solemn declaration of the correctness thereof and shall also produce and exhibit such register whenever the same may be required in any competent court on the written order of the chief officer of the police of the district; and if he shall refuse or fail to do so he shall be liable to the penalties in the last preceding section mentioned.

Records to be forwarded monthly to chief officer of police and produced when required.

35. The revenue officer of every district in which this Ordinance shall be in force or such other officer as may be appointed by the Lieutenant-Governor shall keep a register showing the weight description and value of all rough and uncut diamonds brought or imported into such district the name of the person bringing or importing the same and the place whence they are brought or imported and shall upon application made grant to the person bringing or importing such diamonds a certificate of registration setting forth all of the particulars above-mentioned in the form N in the schedule hereunto annexed upon the payment of the registration fee of one-half per cent. on the value of all such diamonds so brought in or imported from any place beyond this Colony; and any person who shall bring or import any rough or uncut diamonds into such district without obtaining such certificate of registration within forty-eight hours of his arrival with or receipt of such diamonds shall upon conviction be liable to a penalty not exceeding five hundred pounds and in default of payment to imprisonment with or without hard labour for any period not exceeding five years or to both such fine and such imprisonment and shall in addition forfeit such diamonds.

Revenue officer or other officer to keep register of all uncut diamonds brought into district.

36. (1) No rough or uncut diamonds shall be exported from this Colony until the weight and value of the same and the name of the person exporting them shall have been entered in a register to be kept in the form N in the schedule hereunto annexed by the revenue officer of the district from which such diamonds are exported or such other officer as may be appointed by the Lieutenant-Governor in that behalf and a registration fee of one-half per cent. on the value of such diamonds shall have been paid. Any person contravening the provisions of this section shall be liable to the penalties provided in the *second* section of this Ordinance.

No rough diamonds to be exported before registered.

(2) The proceeds of the registration fee mentioned in the last preceding sub-section shall be applied to defray the costs incurred in the administration of this Ordinance.

37. Every licensed diamond dealer or cutter of diamonds and every holder of a permit granted under the *twenty-sixth* and *twenty-seventh* sections of this Ordinance or the holder of a prospecting licence shall be bound to exhibit his licence to any person authorized by the chief officer of the police of the district in writing

Penalties for refusing to produce licence when called on by proper authority.

to demand it and every such licensed person as aforesaid who shall refuse or neglect to produce and exhibit his licence or permit when called upon to do so by any person exhibiting such authority as aforesaid to demand it shall for the first offence incur a penalty not exceeding one hundred pounds and for a subsequent offence a penalty not exceeding three hundred pounds and shall in addition in any case be liable to forfeit any licence held by him or any renewal of the same for such period as the court shall order.

Accused persons forbidden to sell or alienate property till case disposed of.

38. It shall not be lawful for any person arrested for any offence against the provisions of this Ordinance to sell exchange give or otherwise alienate any property of which he may be possessed at the time of his arrest whether movable or immovable until he shall have been discharged from custody or acquitted of such offence or if such person shall be convicted and sentenced to pay any fine until such fine shall have been paid or recovered and any such exchange gift or other alienation made contrary to the provisions of this section shall be void.

CHAPTER III.

MISCELLANEOUS.

Penalties on servants stealing diamonds.

39. Any servant who shall steal any diamond the property of or in the lawful possession of his master or shall conceal or retain with intent to convert the same to his own use any rough or uncut diamond or who shall attempt to commit any of the said offences or who shall be an accessory or accomplice in the commission of any of the said offences shall upon conviction be liable to the penalties provided in the *second* section of this Ordinance; provided always that all diamonds found in the possession of any servant then or lately employed by any master who is or was at the time of such employment a licensed dealer in or cutter of diamonds or a registered claimholder or a registered and accredited agent of a registered claimholder or the holder of a washing permit or prospecting licence shall unless and until the contrary be proved by such servant be deemed and taken to be the property of such master if such servant be then in the employment of any master not being a licenced dealer in or cutter of diamonds or a registered claimholder or a registered and accredited agent of a registered claimholder or the holder of a washing permit or prospecting licence and may be seized and taken possession of by the said master or if the servant is not then in the employment of any master shall be deemed and taken to be the property of the last such master as aforesaid by whom such servant was employed within three months and may be seized and taken possession of by such master.

40. Any person who shall be convicted of having induced or attempted to induce any servant to steal a diamond from his master or conceal or retain with intent to appropriate to his own use any diamond which it was the duty of such servant to have delivered to his master shall be liable to the penalties provided in the *second* section of this Ordinance.

Penalties for inducing servants to steal diamonds.

41. Any person who shall be an accessory either before or after the fact to the contravention of any of the provisions of this Ordinance shall be liable to be charged and dealt with in all respects as the principal.

Accessories may be charged as principals.

42. Any person who shall maliciously place a rough or uncut diamond in the possession of or on the premises of any other person with the intent that such other person shall be convicted under the terms of this Ordinance shall be guilty of an offence and shall be liable to the penalties prescribed in section *two* of this Ordinance.

Penalty for maliciously placing diamond in possession or on premises of other person with intent.

43. In the construction of this Ordinance the following words and expressions shall have the meaning hereby assigned to them unless there be something in the context repugnant thereto; that is to say

Definition of terms.

- “Commissioner” shall mean the Commissioner of Mines;
 “dealer” shall include buyer seller broker and factor, and
 “deal” shall include any sort of dealing in diamonds;
 “servant” shall mean any description of servant whether registered or not;
 “public place” shall mean any place except a private residence;
 “resident magistrate” shall include the assistant resident magistrate for any district;
 “diamonds” shall mean rough or uncut diamonds only;
 “rough and uncut diamonds” shall in the case of diamond cutters be taken to include diamonds which have been cut shaped and polished by them out of the rough;
 “cutter” shall include cleavers and polishers of diamonds;
 “chief officer of the police” shall mean in the Pretoria and Witwatersrand district any commissioner or deputy commissioner of the town police;
 “banker” shall mean any manager cashier or other officer of a joint stock bank acting in his capacity as such;
 “claim” shall include a claim in an alluvial digging or any portion of a mine proclaimed under the Precious Stones Ordinance 1903 held by any person or company separately or jointly in undivided shares with any other person or company;
 “claimholder” shall include the holder of any claim as above defined.

When any form is directed or required to be used such form shall be as nearly as material according to the form set forth in the schedule.

Lieutenant-Governor may make rules for carrying out Chapter II of this

44. The Lieutenant-Governor may from time to time make regulations for the better administration of Chapter II. of this Ordinance and by such regulations may alter any forms by this Ordinance provided or provide additional forms and such forms shall be deemed to be forms by this Ordinance directed to be used.

Ordinance. Officers may be appointed by Lieutenant-Governor to discharge duties imposed on magistrates.

45. It shall be lawful for the Lieutenant-Governor to appoint such officer as he may deem necessary for the discharge of any of the duties by this Ordinance imposed upon any resident magistrate or chief officer of the police in any district and as often as any such officer shall be appointed he shall be deemed for the purposes of this Ordinance to be the resident magistrate or chief officer of police as the case may be and the several sections of this Ordinance shall be read and construed accordingly.

Lieutenant-Governor may apply provisions of this Ordinance to other precious stones. Title.

*46. It shall be lawful for the Lieutenant-Governor by Proclamation in the Gazette to apply the provisions of this Ordinance to any other precious stones mentioned in such Proclamation.

47. This Ordinance may be cited as the Diamond Trade Ordinance 1903.

SCHEDULE.

A. Form of Diamond Dealer's Licence. (Diamond Trade Ordinance 1903.) Revenue Office19....

A..... B..... having this day paid to me the sum of..... and lodged with me a Certificate duly signed by the Resident Magistrate as required by section twenty is hereby licensed to export import or deal in rough or uncut diamonds at his office or place of business situated at..... in the town of.....subject to the obligations and provisions of the above-named Ordinance. This Licence expires on the.....day of19.... Receiver of Revenue.

B. Form of Diamond Dealer's Certificate. (Diamond Trade Ordinance 1903.) I.....Resident Magistrate of..... do hereby certify that.....whose office is situate at.....is a fit and proper person to receive a Licence to deal in export and import rough or uncut diamonds and that he is not the holder of a Licence to sell intoxicating liquors or of a Licence to keep a store or eating-house for natives within Resident Magistrate.

Resident Magistrate's Officeday of.....19....

* Provisions of this Ordinance were applied to diamond carbons (boort) by Govt. Notice No. 1422, 1903 (Gazette, 11/12/03), and to rubies, emeralds, and sapphires by Proc. (Admn.) No. 30, 1904.

C. *Form of Diamond Broker's Licence.*
(Diamond Trade Ordinance 1903.)
Revenue Office

.....19....
A..... B.....
of.....having this day paid to me the sum of
.....and lodged with me a certificate duly signed by the Resident
Magistrate as required by section *twenty-one* is hereby licensed to trade as a
Diamond Broker subject to the obligations and provisions of the above-named
Ordinance.

This Licence expires on the.....day of.....19....

Receiver of Revenue.

D. *Form of Diamond Broker's Certificate.*
(Diamond Trade Ordinance 1903.)

I.....Resident Magistrate of.....
do hereby certify that.....of.....
is a fit and proper person to receive a Licence to act as a Diamond Broker or
Factor and that he is not the holder of a Licence to sell intoxicating liquors or
of a Licence to keep a store or eating-house for natives within.....

Resident Magistrate.

Resident Magistrate's Office
.....day of.....19....

E. *Form of Diamond Cutter's Licence.*
(Diamond Trade Ordinance 1903.)

Revenue Office

.....19..
A.....B.....
having this day paid to me the sum of.....
and lodged with me a Certificate duly signed by the Resident Magistrate as re-
quired by section *twenty-three* is hereby licensed to carry on the trade or business
of cutting cleaving or polishing rough or uncut diamonds at his place of business
situated at.....in the town of.....
subject to the obligations and provisions of the above-named Ordinance.

This Licence expires on the.....day of.....19....

Receiver of Revenue.

F. *Diamond Cutter's Certificate.*
(Diamond Trade Ordinance 1903.)

I.....Resident Magistrate of.....
do hereby certify that.....of.....is a
fit and proper person to receive a Licence to carry on the trade or business of
cutting cleaving and polishing rough and uncut diamonds and that he is not the
holder of a Licence to sell intoxicating liquors or of a Licence to keep a store or
eating-house for natives within.....

Resident Magistrate.

Resident Magistrate's Office
.....day of.....19....

G. *Recognizance under the Diamond Trade Ordinance 1903.*
On the.....day of.....in the year of Our Lord One Thousand
Nine hundred and.....appeared before me.....
Esquire Resident Magistrate for the District of.....

and acknowledge ourselves to owe Our Lord the King to wit the said.....the sum of Five Hundred Pounds sterling and the said.....the sum of Five Hundred Pounds sterling of good and lawful money to be respectively made and levied on our several goods and chattels lands and tenements to the use of our said Lord the King His Heirs and Successors if the said.....shall fail in performing the conditions underwritten. The condition of this Recognizance is that if the said..... shall strictly conform to and abide by all and singular the provisions of the said Diamond Trade Ordinance 1903 during the time the Licence to be by him obtained under this Ordinance shall be in force then this Recognizance shall be null and void or else shall remain in full force and effect.

The said.....and the said.....and the said.....and the said.....do hereby further jointly and severally agree that in the event of the said.....being convicted of contravening any provisions of the said Ordinance this Recognizance shall *ipso facto* become at once executable without the necessity of further process just as if judgment has been obtained upon it.

Taken and acknowledged this day and year above written before me aforesaid.

.....
Resident Magistrate.

H. *Form of Permit.*
(Permit granted under section *twenty-six* of the Diamond Trade Ordinance 1903.)

Resident Magistrate's Office
.....19....

Permission is hereby granted unto.....of.....to purchase (or receive sell or deliver).....diamonds from (or to).....of the approximate weight of.....

Dated at.....this.....day of.....19....

.....
Resident Magistrate of.....

I. *Form of Declaration of Purchaser or Receiver.*

I.....of.....do solemnly and sincerely declare that I am desirous of purchasing (or receiving) from A.B.....diamonds of the approximate weight of.....carats which I require for my own use and not for the purposes of trade here or elsewhere and I make this solemn declaration conscientiously believing the same to be true.

Declared before me at.....this.....day of.....19....

.....
Resident Magistrate of.....

J. *Form of Declaration of Owner.*

I.....of.....do solemnly and sincerely declare that I am desirous of selling (or delivering) to A.B.....diamonds of the approximate weight of.....carats of which I am the lawful and *bona fide* owner (here state how he or she became owner) and that such sale (or delivering) is not for the purposes of trade and I make this solemn declaration conscientiously believing the same to be true.

Declared before me at.....this.....day of.....19....

.....
Resident Magistrate of.....

K. **WASHING PERMIT.**

(Permit granted under section *twenty-seven* of the Diamond Trade Ordinance 1903.)

Permission is hereby granted unto.....of.....to sell export or dispose of the diamonds herein specified and found in the ground herein described.

Dated at.....this.....day of.....19....

.....
Resident Magistrate of.....

From whom ground bought.	Date of purchase.	Number of Loads.	Price paid for ground.	Loads washed.	No. of diamonds of ten carats and upwards.	Weight of any single stone valued above £100.	Total weight of parcel.

L. *Form of Declaration for Washing Permit.*

I.....of.....do solemnly and sincerely declare that the rough and uncut diamonds hereinafter specified were found by me in.....loads of diamondiferous ground purchased by me on the.....day of.....19.....from.....and I make this solemn declaration conscientiously believing the same to be true.
 Declared before me at.....this.....day of.....19.....

.....
 Resident Magistrate of

Specification of Diamonds mentioned in the foregoing declaration.

No. of stones of 10 carats and upwards.	Weight of any single stone above the value of £100.	Total weight of parcel.

M. *Brokers' Companies' and other Licensed Sellers' Notes of Sale.*

A.
 Note to be handed by broker dealer etc. to buyer.

No.....
 Bought of.....19....

Details of parcel. Single stones of a value above £100 to be specified. Total of parcel.

No. of stones 10 carats each or over.	Carats.	Price.	Amount.			Carats.	Amount.		
			£	s.	d.		£	s.	d.

Certified correct.

.....
 Licensed Seller or Broker.

M. Brokers' Companies' and other Licensed Sellers' Notes of Sale.

B.
Note to be handed by broker to seller.

No..... 19...
Sold to.....

Details of parcel. Single stones of a value above £100 to be specified. Total of parcel.

No. of stones 10 carats each or over.	Carats.	Price.	Amount.			Carats.	Amount.		
			£	s.	d.		£	s.	d.

Certified correct.
Licensed Seller or Broker.

M. Brokers' Companies' and other Licensed Sellers' Notes of Sale.

C.
Counterfoil to be kept by seller or broker as registered.

No..... 19...
Sold for.....
Sold to.....

Details of parcel. Single stones of a value above £100 to be specified. Total of parcel.

No. of stones 10 carats each or over.	Carats.	Price.	Amount.			Carats.	Amount.		
			£	s.	d.		£	s.	d.

Certified correct.
Licensed Seller or Broker.

IMPORTS, PURCHASES AND FINDS.

1 DATE.	2 CONSIGNOR, CUTTER, PROSPECTOR, SELLER, BUYER OR BROKER, CONSIGNEE OR OWNER.	3 BROKER OR OWN FINDS.	4 DETAILS OF PARCEL.								5 TOTAL VALUE OF PARCEL.		REMARKS.
			(a) Single Stones each valued at £100 or over.			(b) No. of other Stones 10 carats or over.			(c) Aggregate weight of other diamonds less than 10 carats.		Weight.	Value.	
			No.	Weight.	Value.	No.	Weight.	Value.	Weight.	Value.			

* This form substituted by Govt. Notice No. 1111 of 1903 (*Gazette*, 2nd October, 1903) under section *forty-four* of this Ordinance.

* N

D.T.O. No. 14.

SALES AND EXPORTS.

1 DATE.	2 BUYER OR CONSIGNEE.	3 BROKER.	4 DETAILS OF PARCEL.								5 TOTAL VALUE OF PARCEL.		REMARKS.	
			(a) Single Stones each valued at £100 or over.			(b) No. of other Stones 10 carats or over.			(c) Aggregate weight of other diamonds less than 10 carats.		Weight.	Value.		
			No.	Weight.	Value.	No.	Weight.	Value.	Weight.	Value.			Weight.	Value.

* This form substituted by Govt. Notice No. 1111 of 1903 (*Gazette*, 2nd October, 1903) under section *forty-four* of this Ordinance.

A.D. 1903.]

Diamond Trade.

[Ord. No. 63.]

*By Ord 9 of 1912
Section 24 to 31 inclusive*

No. 64 of 1903.]

[Promulgated 7th August, 1903.]

ORDINANCE

TO CONFER POWER TO EXPROPRIATE LAND ON MUNICIPALITIES.

Assented to 30th July 1903.

Whereas it is desirable to confer powers on municipalities in respect to the expropriation and acquisition of land and other immovable property for municipal purposes and to the execution and carrying out of sewerage and drainage works;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. This Ordinance shall be cited for all purposes as the *Municipalities Powers of Expropriation Ordinance 1903.* Title.

2. In this Ordinance unless the context otherwise requires : Definitions.

“ the council ” means the council for a municipality established under any law ;

“ land ” means and includes ;

(a) land with or without buildings thereon ;

(b) land or the usufruct thereof ;

(c) all land held under any tenure or under lease or stand or claim licence ;

(d) any servitude over land.

3. Where any notice is required by this Ordinance to be served on or given to any person it shall either be served personally on such person or left at his last usual place of abode and in case any such person shall be absent from this Colony any such notice shall be served on any agent of such person whose name and address are registered at the offices of the town council and shall also be left with the occupier of any land in respect of which such notice is given or if there be no occupier shall be published in the *Gazette* and left with the Registrar of Deeds. Service of notice.

4. This Ordinance is divided into two parts relating to the following subject matters :— Matters dealt with by Ordinance.

Part I.—The expropriation and acquisition of land.

Part II.—Sewerage and drainage works.

PART I.

THE EXPROPRIATION AND ACQUISITION OF LAND.

5. The council may subject to the provisions of this Ordinance for the purpose of or in connection with the construction improvement or alteration of any street square open space park recreation Expropriation of land for certain purposes.

ground sewer drain sewerage works sewage farms drainage works culvert bridge or any other works which the council is now or may hereafter be empowered to carry out purchase or acquire by compulsory purchase any lands whether situate within or without the limits of the municipality.

Conditions
before
council can
expropriate.

6. The following provisions shall prevail with respect to the exercise of the power to purchase lands compulsorily under the last preceding section of this Ordinance :—

- (i) The council before putting such power in force shall ;
 - (a) pass a resolution by a majority of councillors at the time in office at a meeting of the council held not less than fourteen days after notice shall have been given to the council at a meeting thereof of an intention to move for such compulsory purchase ;
 - (b) publish once at least in each of three consecutive weeks in two or more newspapers circulating in the municipality an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken naming a place where a plan of the proposed undertaking may be seen at all reasonable hours and stating the quantity of lands that they require ;
 - (c) serve on every owner or reputed owner lessee or reputed lessee and occupier of such lands a notice defining in each case the particular lands intended to be taken.
- (ii) If any person interested as owner lessee or occupier of any land proposed to be taken by the council objects to the compulsory purchase thereof and serves notice in writing of such objection on the council at any time within one month of the service of notice on him as provided in the preceding sub-section the council shall not be entitled to exercise their compulsory power of purchase without the sanction of the Lieutenant-Governor unless such objection be withdrawn.
- (iii) The Lieutenant-Governor may on the application of the council and on due proof of the proper advertisements having been published and notices served appoint some person or persons to make an inquiry on the spot into the propriety of the proposed undertaking and the acquisition of the lands proposed to be taken therefor and the objection thereto and to report to the Lieutenant-Governor on the matters in respect of which such inquiry was directed and on receiving such report the Lieutenant-Governor may make an order empowering the council to put in force with reference to the lands proposed to be taken or any of them the powers conferred by section *five* of this Ordinance and either absolutely or with such conditions and modifications as he may think fit.

7. If after the expiration of the period of one month within which notices of objection may be served no such notices of objection are served on the council or forthwith after the making of the order of Lieutenant-Governor referred to in the preceding section as the case may be the council may at any time within three months after such expiration or the date of such order as aforesaid serve a notice on every owner or holder of any interest in the land proposed to be acquired demanding a statement in writing specifying the nature and extent of his ownership or of any interest held by him and under what title the same is held and of the claim made by him in respect thereof and every such notice shall state that the council is willing to treat for the purchase thereof and as to the compensation to be made for the damage that may be sustained by him by reason of such purchase or the carrying out of the purposes for which the land is required.

Notices to treat may be served by council.

8. If for one month after the service of such notice any such owner or holder as aforesaid shall have failed to state the particulars of his claim in respect of any such land or to treat with the council in respect thereof or if such owner or holder as aforesaid shall not agree as to the amount of compensation to be paid for the interest in such land belonging to him or which he is by this Ordinance enabled to sell or for any damage sustained by him by reason of the carrying out of the purposes for which such land is required then the amount of such compensation shall be settled by arbitration as hereinafter set forth; provided however that nothing herein contained shall prevent an agreement as to the amount to be paid being made between the parties either prior to or after the commencement of arbitration proceedings nor shall anything herein contained prevent the payment by the council at any time if it shall so think fit of the amount of any mortgage bond or other preferent charge upon the property in respect of which any claim shall be made whether the amount of compensation payable in respect of such property shall have been settled or not; but if any such mortgage bond or other preferent charge shall be so paid in advance by the council it shall be considered as a payment on account of the amount of compensation payable in respect of such property.

In the absence of agreement the amount of compensation to be settled by arbitration.

9. All questions as to disputed compensation by this Ordinance required to be settled by arbitration shall subject to the provisions of this Ordinance be settled in manner and form provided by The Expropriation of Land and Arbitration Clauses Proclamation 1902 in the same manner as if the council were substituted for the Governor as one of the parties to such arbitration and as if the name of the town clerk of the council were substituted therein for the secretary to the Department of Public Works.

How compensation to be settled by arbitration.

Each party
may appear
by counsel.

10. Upon all proceedings before any arbitrator or arbitrators or umpire as the case may be each party may appear in person or by counsel or solicitors or admitted and licensed law agents and may produce such witnesses and documentary evidence as the arbitrator or arbitrators or umpire as the case may be shall allow.

Costs of
arbitration.

11. The cost of and incidental to any reference to arbitration shall be borne by the council unless the arbitrator or arbitrators shall award the same or a less sum than shall have been offered by the council as provided in section *seven* of this Ordinance in which case each party shall bear his own costs incident to the arbitration and the costs of the arbitrators shall be borne by the parties in equal proportions.

Basis on
which com-
pensation
is to be
assessed.

12. With respect to the compensation payable by the council for or in respect of any land required by them or for any right injuriously affected by the exercise of the powers conferred under the provisions of this Ordinance the following provisions shall prevail :

(a) no enhanced or improved value which may accrue to any such property or rights by reason of the carrying out of the said purposes shall be taken into account in assessing such compensation ;

(b) no addition to or improvements of any such property made after the date of the service of the notice mentioned in sub-section (1) (c) of section *six* (except such addition or improvement as was necessary for the maintenance of the property in a proper state of repair or was undertaken in pursuance of obligations entered into previous to such notice) shall be taken into account and in the case of any interest acquired after the said date no separate estimate of the value thereof shall be made so as to increase the amount of compensation to be paid for such property or rights ;

(c) interest shall be payable at such rate and from such date as the arbitrators may determine on so much of the compensation payable by the council as shall remain unpaid until such amount shall be paid.

Persons under
disability
may transfer.

13. It shall be lawful for all corporations fiduciary heirs or fidei-commissary heirs women married without community of goods guardians curators or trustees under marriage settlements or holding lands for native purposes and all other trustees executors and administrators and all persons entitled to a life interest in any lands whether subject to a lease or not to sell transfer and convey the same and all their right title interest claim and demand therein to the council and to enter into all necessary agreements for that purpose.

Courts may
appoint
persons to
represent
persons
interested.

14. It shall be lawful for the Supreme Court or the Witwatersrand High Court in matters within its jurisdiction on application thereto by the council to appoint any person or persons to represent and act for the purposes of this Ordinance on behalf of any owner

or holder of any rights in land or buildings required to be taken as aforesaid who may be absent from this colony or may be under any disability to act for himself or who cannot after reasonable inquiry be found and in the event of such appointment being made such person or persons so appointed shall be authorized and empowered to act for all the purposes of this Ordinance for and on behalf of every such owner or holder on whose behalf he or they shall have been so appointed.

15. In case of any dispute as to who is entitled to receive any money to be paid under this Ordinance or in case of any money payable to any person who cannot be found or in case of any interdict with respect to such money it shall be lawful for the council to pay such money to the Master of the Supreme Court to hold the same in trust for the person or persons entitled thereto and thereupon all liability of the council in respect of such payment shall come to an end.

In case of disputes as to persons entitled money may be paid to Master of the Supreme Court.

16. It shall be lawful for the council after the expiration of the period of one month mentioned in section *eight* to enter upon take possession of and use any such land before proceedings have been taken to settle the amount of compensation to be paid for it leaving all questions as to such compensation to be settled afterwards in manner provided by this Ordinance.

Entry upon land.

17. In every case in which any land is subject to a mortgage and the council requires only a portion of the said land the mortgagee of such land may consent that the portion of land so required by the council be transferred to them released from such mortgage and the consent to the transfer and release of such portion of any lands so mortgaged shall in no way affect the rights of the mortgagee to the remainder of the land and the mortgage bond shall remain and be in full force and effect for the sum due thereon and interest as to the remainder of the lands as if no consent to transfer had been given.

Land subject to mortgage.

18. In any case in which any land is subject to a mortgage and the council requires only a portion of the said land and the mortgagee of such land does not consent to the transfer thereof released from such mortgage and if the portion so required be of less value than the amount of the mortgage bond with interest thereon and the mortgagee shall not consider the remaining part of such land a sufficient security for the payment of the said bond the mortgagee may insist and demand that the value of and compensation to be given for that portion of the land so required by the council may be settled by agreement between him and the council and if the parties aforesaid disagree respecting the amount of such value or compensation the same shall be determined as in all other cases of disputed compensation and the amount of such value or compensation being so agreed upon or determined shall be paid by the council to the mortgagee in satisfaction of his

Agreement between mortgagee and council.

mortgage debt in so far as the same may extend and a memorandum of what shall have been so paid shall be written or endorsed on the mortgage bond and upon the official copy thereof filed of record in the Deeds or other Registration Office.

Compensation when all land included in mortgage is taken.

19. In any case in which all land comprised in and affected by a mortgage bond is required to be taken by the council then the amount of compensation required to be paid by the council for the taking of such land shall be applied as far as the same is required towards the payment of the mortgage debt and all interest due thereon and the balance of such compensation money shall be paid over to the owner of the land and in any case where the amount of the compensation offered by the council to be paid for such land is not equal to the amount due on such mortgage bond then the mortgagee shall for the purposes of determining the same as in all other cases of disputed compensation be considered as the owner and all the powers by this Ordinance given to owners in cases of disputed compensation are hereby conferred on the mortgagee; provided that where the compensation when so agreed upon or determined exceeds the amount due on the mortgage bond then the mortgagee must pay over the surplus to the owner; provided further that it may be lawful for the owner at any time before the compensation is agreed upon or determined to redeem the mortgage bond and then the same proceedings shall be had as in all other cases of disputed compensation.

Land comprised in lease and apportionment of rent.

20. If any land shall be comprised in a lease for a term of years unexpired part only of which land shall be required by the council under this Ordinance the rent payable in respect of the lands comprised shall be apportioned between the lands so required and the residue of such lands and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part and the council on the other part and if such apportionment be not settled by agreement between the parties such apportionment shall be settled by the resident magistrate of the district in which such lands are situate and after such apportionment the lessee of such lands shall as to all future accruing rent be liable to only so much of the rent as shall be so apportioned in respect of the lands not required as aforesaid and as to the lands not so required and as against the lessee the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease and all the covenants conditions and agreements of such lease except as to the amount of rent to be paid shall remain in force with regard to that part of the land which shall not be required as aforesaid in the same manner as they would have done in case such part only of the land had been included in the lease.

21. Every such lessee as last aforesaid shall be entitled to receive from the council compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required or otherwise by reason of the execution of the works for which such land is required.

Compensation for damages through severance.

22. If any land shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year and if such person be required to give up possession of any land so occupied by him before the expiration of his term or interest therein he shall be entitled to compensation for the value of the unexpired term or interest in such land and for any just allowance which ought to be made to him by an incoming tenant and for any loss or injury he may sustain or if part only of such land be required compensation for the damage done to him in his tenancy by severing the land held by him or otherwise injuriously affecting the same and the amount of such compensation shall be determined by the resident magistrate having jurisdiction in case the parties differ about the same.

Land held on tenancy from year to year.

23. If any party having a greater interest than a tenant at will claim compensation in respect of any unexpired term or interest under any lease or grant of such land the council may require such party to produce the lease or grant in respect of which such claim shall be made or the best evidence thereof in his power and if after demand made in writing by the council such lease or grant or such best evidence thereof be not produced within twenty-one days the party so claiming compensation shall be considered a tenant holding only from month to month and be entitled to compensation accordingly.

Evidence of lease to be furnished to council.

24. The council may from time to time sell let lease or otherwise deal with any land acquired by them under the provisions of this Ordinance and where any land so acquired includes or constitutes the whole of the properties on both sides of any street lane or thoroughfare the council may close such street lane or thoroughfare and sell let lease or otherwise deal with the land formerly occupied thereby in such manner as they shall think fit; provided always that if the council decide to close any such street lane or thoroughfare they shall not less than one month prior to so doing advertise their intention in two or more local newspapers during which time any person feeling aggrieved by such contemplated closing may apply to any competent court for relief and upon such application being made within such period of one month the court shall be entitled to restrain the council from such closing unless they shall satisfy the court that no real or substantial damage will be occasioned to the applicant or until they shall have expressed their willingness to make compensation for such damage as may be found by arbitration under the provisions of this Ordinance to have been caused to such applicant.

Power to council to sell or deal with land bought and to close streets.

PART II. *

SEWERAGE AND DRAINAGE WORKS.

Powers as to
sewerage and
drainage.

25. For the purpose of carrying out any drainage or sewerage works the council may

(a) cause such sewers drains and pipes to be made laid altered deepened covered over and maintained either within or (subject to the provisions contained in sections *twenty-eight* and *twenty-nine* of this Ordinance) without the limits of the municipality as shall be necessary for the effectual disposing of the sewage of or draining the municipality or any portion thereof and from time to time to cause to be made and maintained all such reservoirs sluices engines ventilating shafts and other works as shall be necessary for cleansing and ventilating such sewers drains and pipes ;

(b) carry such sewers drains or pipes through across or under any public road street square or open space or any place laid out as or intended for a public road street square or open place either within or without the limits of the municipality without paying compensation and after giving reasonable notice in writing to the owner or occupier of their intention of so doing into through or under any land within or (subject to the provisions contained in sections *twenty-eight* and *twenty-nine* of this Ordinance) without the limits of the municipality making compensation for any damage done which compensation shall if not mutually agreed upon be settled by arbitration in manner provided by Part I of this Ordinance ; provided that in settling any compensation payable by the council hereunder the existence of any sanitary passage through or over which the council have a right of access to any private land or building for the purposes of sanitary service and which right the council may be willing to surrender shall be taken into account ;

(c) from time to time alter enlarge divert discontinue close up or destroy any sewers drains or pipes under the control of the council ;

(d) within or (subject to the provisions of sections *twenty-eight* and *twenty-nine*) without the limits of the municipality construct any works for the purpose of receiving storing disinfecting distributing or otherwise disposing of any sewerage or drainage.

Vesting of
sewers in
council and
right of
access thereto.

26. All sewers drains pipes and ventilating shafts or other conveniences for the disposal of sewage or drainage constructed by or under the control of the council shall be vested in the council and the council or any other persons duly authorized by them

* See Act No. 6, 1910, section *two*.

shall at all times have a right of access to private property for purposes of inspection maintenance alteration or repair of such sewers drains pipes shafts and other conveniences.

27. The council may deal with any lands held by them for the purpose of receiving storing disinfecting or distributing sewage or drainage in such manner as they may deem most profitable either by leasing the same for agricultural purposes or by contracting with some person to take the whole or a part of the produce of such land by farming such land and disposing of the produce thereof subject to the restriction that in dealing with land for any of the above purposes provision shall be made for effectually disposing of all sewage or drainage brought to such land without creating a nuisance.

Power to deal with land held for the purpose of sewerage.

28. The council shall at least one month before commencing the construction or extension of any sewer or any other work for sewerage purposes beyond the limits of the municipality give notice of the intended work by advertisement in one or more local newspapers circulating within the district where the work is to be done or if there be no such newspaper then in one or more newspapers circulating in the municipality. Such notice shall describe the nature of the intended work and shall state the intended termini thereof and particulars of the roads streets squares open spaces and other land (if any) through across under or on which the work is to be done and shall name a place where a plan of the intended work is open for inspection at all reasonable hours and a copy of such notice shall be served on the owners or reputed owners lessees or reputed lessees and occupiers of the land and on the local authority (if any) having the care of such roads streets squares or open spaces.

Notice before commencing any sewerage works outside municipal limits.

29. If any such owner lessee or occupier or any such local authority or any other person who would be affected by the intended work objects to such work and serves written notice on the council of such objection at any time within the said period of one month then the intended work shall not be commenced without the consent of the Lieutenant-Governor unless such application is withdrawn.

Notice of objection by owner.

*30. The Lieutenant-Governor may on the application of the council appoint some person or persons to make an inquiry on the spot into the propriety of the intended work and the objections thereto and to report to him on the said matter and on receiving the report of such person or persons the Lieutenant-Governor may make an order disallowing the intended work or allowing it with such modifications (if any) as he may deem necessary.

Inquiry by Lieutenant-Governor and action thereon.

* As to utilisation of Klipspruit No. 58 as sewage farm, see Govt. Notice No. 1018, 1904 (*Gazette*, 16/9/04).

Offences and penalties.

31. Any person who without the previous consent in writing of the council shall

(a) erect or cause to be erected any building or other structure over any sewer drain or pipe vested in or constructed under the authority of the council; or

(b) excavate open up or remove or cause to be excavated opened up or removed the ground under or near to any such sewer drain or pipe; or

(c) make or cause to be made any opening into such sewer drain or pipe without the written consent of the council for the purpose of discharging sewage or drainage into the same or otherwise; or

(d) injure or destroy or cause to be injured or destroyed any such sewers drains or pipes or any works or things in connection therewith;

shall for each offence be liable to a penalty not exceeding fifty pounds and the council may alter or demolish or otherwise deal with as they may think fit any building or structure so erected fill in and make good any such damage or close any such opening into a sewer drain or pipe and the expenses incurred in so doing shall along with such penalty be recoverable from the offender in any competent court and upon failure to pay such penalty and expenses such person may by order of such court be imprisoned for any period not exceeding three months.

No. 66 of 1903.]

[Promulgated 7th August, 1903.]

*** ORDINANCE**

TO AMEND LAW No. 22 OF 1898.

Assented to 30th July 1903.

Whereas it is desirable to amend Law No. 22 of 1898 be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

1. Law No. 22 of 1898 and so much of any other law as may be repugnant to or inconsistent with this Ordinance shall be and is hereby repealed ; but no such repeal shall affect anything duly done or any right or privilege acquired or any liability penalty or forfeiture incurred in respect of any such laws. Repeal of laws.

2. In the interpretation of this Ordinance unless repugnant to the context the following words and expressions in inverted commas shall have the meaning placed opposite to them : Interpretation clauses

“ block of claims ” or “ block ” means any number of contiguous claims ;

“ claim ” shall mean the portion of ground assigned for mining purposes within any proclaimed alluvial diggings of a size fixed by this Ordinance or the right to dig for precious stones in such portion of ground ;

“ claimholder ” shall mean the registered holder of the right to dig for precious stones in a claim ;

“ Crown land ” shall mean all unalienated Crown land and all land the property of the Government of this Colony in whatever way acquired ; and any land alienated by the Crown with an express reservation to it of precious stones or minerals ;

“ Commissioner ” shall mean the Commissioner of Mines ;

“ digging ” or “ mining ” shall mean the winning of precious stones including all work necessary for the purpose irrespective of whether such mining is effected by underground mining works open cuttings or otherwise ;

“ discoverer ” shall mean a duly licensed prospector who has discovered precious stones on Crown lands ;

“ District Registrar ” shall mean the District Registrar or Assistant District Registrar of Mining Rights for the mining district for which he is appointed ;

“ Inspector ” shall mean the official appointed as Inspector or Deputy Inspector of Mines for the mining district in which the mine or alluvial diggings is situated ;

* See Act No. 31 of 1908.

“precious stones” shall include diamonds and any other gems or stones proclaimed such by the Lieutenant-Governor;

“private land” shall mean any area of ground of which the ownership is vested in an individual or company as shown by title or deed of transfer and in the title of which there is no reservation by the Crown of precious stones and minerals;

“prospector” shall mean a person who holds a licence to prospect for precious stones;

“prospecting” shall mean the doing of all work which is necessary for the search of precious stones or which has in view the testing of the payability of the place in which precious stones have been found;

“Registrar” “Assistant Registrar” shall mean respectively the Registrar and Assistant Registrar of Mining Rights;

“stand” shall mean a defined portion of ground of a size fixed by this Ordinance to which title is issued by the Crown and situated in a stand township;

“stand township” shall mean every area of ground proclaimed as such;

“standholder” shall mean the registered holder of the title to a stand issued by the Crown.

3. The right of mining for and disposing of all precious stones is vested in the crown.

Right of disposing of precious stones vested in Crown.

CHAPTER I.

PROSPECTING FOR PRECIOUS STONES.

(a) *On Crown Land.*

4. Any white male inhabitant of this Colony over the age of eighteen shall be at liberty to take out at the office of any District Registrar a licence in the form in the first schedule to this Ordinance to prospect for precious stones on Crown land subject to the following provisions:

Prospecting on Crown land.

(1) Such licence may be issued for any period with the right of renewal from time to time for any period and shall bear a revenue stamp of two shillings and sixpence for each month during which it shall be in force and save as hereinafter otherwise provided shall give to the holder thereof the right during such period to enter upon and prospect for precious stones on any Crown land situated in this Colony.

* (2) Nothing contained in any prospecting licence shall authorize the holder thereof to prospect on such places as the Lieutenant-Governor may from time to time by notice in the *Gazette*

* As to exclusions from prospecting, see Chronological Table.

exclude from prospecting or on any public square street road railway cemetery public works or on any area proclaimed a mine or alluvial digging or mining area under this Ordinance or on any area proclaimed a stand township under Law No. 15 of 1898 or Law No. 22 of 1898 or on any land held under any mining title issued under Law No. 15 of 1898 or any amendment thereof or within twenty yards of a prospecting area as hereinafter defined or in any town or village or in any native location without the consent of the Commissioner for Native Affairs.

(3) A prospector shall have the exclusive right of prospecting for a period not exceeding one month within an area hereinafter called a "prospecting area" one thousand yards square at each corner of which it shall be his duty to put in and to maintain pegs not less than two feet high above the ground on which pegs shall be inscribed his name and the date of pegging. Every prospector shall during the currency of his licence be at liberty to move to any other portion of Crown land open for prospecting; provided that by so doing he does not interfere with the prospecting area of any other prospector. Upon such removal his prospecting area shall be open to any other prospector to prospect thereon.

(4) Any person who shall knowingly and wilfully remove or destroy any prospector's pegs or any person who without the consent of the prospector shall knowingly and wilfully prospect within such prospector's prospecting area shall be liable on conviction to a penalty not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

(5) Every prospector shall be bound and obliged in respect of any prospecting area pegged out by him to prospect thereon subject to such regulations as may be made by the Commissioner; and if in the opinion of the District Registrar he shall fail to do so he shall forfeit his licence and shall not again be permitted to take out a prospecting licence for a period of six months and his prospecting area shall be open to any other prospector to prospect thereon.

(6) Every prospector shall for the purpose of *bona fide* prospecting on unoccupied Crown land be entitled to graze free of cost four draught animals and with the consent of the District Registrar such additional number of draught animals up to sixteen as may be shown by him to be necessary; he shall also have the right to use such water and cut such timber for his personal use as the District Registrar may authorize.

Provisions applying to prospecting on Crown land held under lease or other title.

5. Nothing contained in a prospecting licence shall be construed

(a) to confer on the holder thereof any right of entry upon crown land held under a licence issued under the **Settlers Ordinance* 1902 or any amendment thereof or under lease or under a title to which there is a reservation of precious stones and minerals to the Crown for the purpose of prospecting thereon without the consent of the Commissioner of Lands and unless such holder either undertakes to pay to the licensee or lessee or owner of such land as the case may be the amount of compensation for any surface damage he may cause and gives security to the said Commissioner for the payment of all claims for compensation as they arise and are determined. In the absence of any agreement the amount of such compensation shall be determined by arbitration in manner and form provided by the Expropriation of Lands and Arbitration Clauses Proclamation 1902;

(b) to authorize the holder thereof to enter upon any land used as a garden orchard vineyard nursery plantation or ornamental pleasure ground or on land under cultivation or within one hundred yards of any spring reservoir dam or water-works or within two hundred yards of any house homestead or building.

Commissioner may make regulations for prospecting.

†6. It shall be lawful for the Commissioner from time to time to make revoke or amend regulations not inconsistent with the provisions of this Ordinance providing for *bona fide* prospecting on Crown land and the charges to be paid by persons prospecting on occupied Crown land for the grazing of cattle on such land and the use of water and firewood thereon.

(b) *On Private Land.*

Prospecting on private land.

7. Prospecting on private land shall be subject to the following provisions:—

(1) The owner thereof may by himself or his servants prospect thereon without a licence on giving notice of his intention to do so to the District Registrar; and any owner of such land prospecting thereon without giving such notice as aforesaid shall be liable to a fine not exceeding ten pounds and in default of payment to imprisonment without hard labour for a period not exceeding one month.

(2) Any prospector may with the consent in writing of the owner of such land as aforesaid prospect thereon on such terms and conditions as may be agreed upon. It shall be the duty of the owner to give notice to the District Registrar that he has given such consent as aforesaid and to notify

* Words in italics substituted by Ordinance No. 4, 1904, section one.

† For regulations *re* prospecting on Crown lands, see Govt. Notice No. 263, 1907 (*Gazette*, 1/3/07).

to such District Registrar the name and address of the person to whom it has been given; and in default thereof he shall be liable to the penalties in the last preceding sub-section provided.

CHAPTER II.

DISCOVERY OF PRECIOUS STONES.—DUTIES AND RIGHTS OF A DISCOVERER.

8. It shall be the duty of every prospector who shall discover any precious stones within thirty days thereafter to give notice thereof and of the place where such discovery has been made to the District Registrar and thereafter to make once in each month a solemn declaration in the form set forth in the second schedule hereto annexed of the weight and value of the precious stones found by him and of the amount of ground measured in loads of sixteen cubic feet to each load which has yielded the same and to lodge such declaration with the District Registrar; and any person who shall fail to give the notice aforesaid or make and lodge the declaration required under this section shall be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Notice to be given by discoverer of precious stones.

9. (1) Any holder of a prospecting licence under the provisions of this Ordinance who shall prove to the satisfaction of the District Registrar with whom he has lodged the declaration mentioned in the preceding section that he has discovered precious stones on Crown land shall be entitled on production of the certificate mentioned in the next succeeding sub-section on the proclamation of a mine at the place where the discovery was made to an undivided one-tenth share of the mine proclaimed as aforesaid in case the extent thereof exceeds in area two hundred and seventy thousand square feet. Where the extent of the mine does not exceed such area he shall be entitled to such undivided portion thereof as an area of twenty-seven thousand square feet bears to the whole extent of the mine.

Discoverer's rights.

(2) Such discoverer shall receive a certificate from the District Registrar that he is so entitled as aforesaid on satisfying the said Registrar that he has discovered a new pipe and not merely an extension of an already discovered pipe and that there are reasonable prospects that precious stones exist therein in payable quantities.

(3) Upon the granting of such certificate as aforesaid all prospecting except by the holder thereof at the place where the discovery was made and within such distance therefrom as may be determined by the Commissioner shall cease.

Discoverer's right if Lieutenant-Governor does not see fit to proclaim a mine at place where discovery made.

10. It shall be lawful for the holder of the certificate mentioned in section *nine* of this Ordinance should the Lieutenant-Governor not see fit to proclaim a mine at the place referred to in the certificate within six months after the granting of the same to dig for precious stones within an area agreed to by the Commissioner and as far as possible equivalent in extent to the area to which the said certificate entitles him in the same manner and with the same rights and obligations in every respect as if such place had been proclaimed a mine; provided that nothing herein contained shall be deemed or taken in any way to interfere with the rights and power of the Lieutenant-Governor at any time to proclaim a mine including the area aforesaid; and provided further that such area and any transfer of it shall be registered in the same way as if it were in a proclaimed mine in manner hereinafter provided.

Penalty for making false declaration of discovery of precious stones.

11. Any person who shall make any declaration referred to in the *eighth* section of this Ordinance well knowing that the precious stones declared to have been found were by himself or by some other person placed or deposited in or on the spot or in the soil dug out or removed from the spot in which such declarant was prospecting or where the discovery of such precious stones is declared as aforesaid to have been made and were not naturally situated in or on the spot or in the soil where they were declared to have been found or discovered or well knowing that the said precious stones were not found or discovered on or near the place where they were declared to have been found or discovered shall upon conviction be liable to such punishment as is by law provided for the crime of perjury.

The placing of precious stones on places where not naturally found in order to induce prospector to make declaration punishable as fraud.

12. Any person who shall wilfully place or deposit or be accessory to the wilfully placing or depositing of any precious stones in any spot or place with intent to persuade or induce any person to make such solemn declaration as aforesaid or for the purpose of misleading the Lieutenant-Governor or any other person as to the payable nature of a spot or place where precious stones have been or may be declared to have been found and previous to such spot being proclaimed an alluvial digging or mine shall upon conviction be liable to such punishment as is by law provided for the crime of fraud.

Onus of proof when person charged under last section.

13. In any proceedings taken for the contravention of the last preceding section if the accused person shall be proved to have placed or deposited or to have been accessory to the placing or depositing of any precious stones in any place where the finding thereof would be likely to lead any person to make a declaration of the finding of the same or would tend to mislead the Lieutenant-Governor or any other person he shall be taken to have so placed or deposited such precious stones in contravention of the last preceding section unless he shall produce satisfactory evidence to the contrary.

CHAPTER III.

PROCLAMATION OF MINE AND ALLUVIAL DIGGINGS.

14. The Lieutenant-Governor may at any time after a discovery of precious stones has been made and shall prior to proclaiming any place a mine or alluvial digging take such steps as he may deem fit for the purpose of testing the character payability and extent of the place at which precious stones have been discovered and for this purpose may appoint such duly qualified persons as he may think fit and may authorize the expenditure of such sums of money as shall be deemed necessary for the purpose of such testing; provided that in no circumstances shall any responsibility whatever attach to the Government in case any proclaimed mine or alluvial digging should after the proclamation thereof prove to be or become unpayable.

Lieutenant-Governor may test a mine before proclamation.

*15. Whenever the Lieutenant-Governor shall be satisfied after taking the steps mentioned in the last preceding section that there are reasonable prospects that precious stones exist in payable quantities it shall be lawful for him after causing the extent of the area containing precious stones to be surveyed to proclaim the area so surveyed a mine or alluvial digging or to proclaim it as portion of an existing mine or alluvial digging as the case may be according as the place where the precious stones have been discovered contains a pipe or is an alluvial deposit or extension of an existing pipe or of an alluvial deposit.

Proclamation by Lieutenant-Governor of mine or alluvial digging.

†16. (1) For the purpose of working any mine it shall be lawful for the Lieutenant-Governor to cause an area not being diamondiferous to be surveyed beacons off in accordance with regulations made by the Commissioner and proclaimed as a mining area. Such area shall be of sufficient extent for depositing floors machinery and tipping sites and all other matters and things connected with the proper and efficient working of the mine. A plan of the said survey shall be framed and deposited for public inspection at the office of the District Registrar showing the extent of the mine and mining area and the shape dimensions and boundaries of the area available for depositing floors.

Mining area and depositing ground.

(2) The area so surveyed may from time to time by proclamation in the *Gazette* be reduced or enlarged at the discretion of the Lieutenant-Governor as the necessities of the mine may require and the Lieutenant-Governor may make regulations for the proper laying out of depositing floors machinery and tipping sites in connection with the said mine.

(3) No private land may be proclaimed a mining area without the consent of the owner thereof except for the purpose of working a mine proclaimed on such land.

* For proclamations and deproclamations, etc., see Chronological Table.

† For proclamations, etc., under this section, see Chronological Table.

(4) The area available for depositing floors shall be sufficient in extent for the purpose of depositing soil containing precious stones from the mine and also reef or shaly ground and for the purpose of sinking wells laying tramways erecting compounds and other necessary buildings or doing or performing other works matters and things in connection with mining operations in the mine. The said area shall be in the neighbourhood of or in proximity to the mine but so as not to encroach on a reserve of one hundred yards round the margin thereof which shall be used exclusively for machinery for hauling ground from the mine and the laying of tram-rails for transporting such ground to the depositing area.

Rights of owner of land or lessee of land included in such Proclamation.

17. The surface rights of the owner of land included under any such Proclamation as aforesaid shall immediately on the publication thereof be suspended until such time as the said Proclamation is with respect to such land revoked or cancelled; and if any portion of land included in such Proclamation is held under a lease other than a mineral lease then such lease shall cease and determine on notice thereof by the Commissioner to the lessee and in such case the lessee shall be entitled to such compensation as may be agreed upon between him and the Commissioner in the case of Crown land and between the owner the Commissioner and the said lessee in the case of private land.

If no agreement as aforesaid be arrived at then the amount of compensation shall be determined by arbitration in manner provided by the Expropriation of Lands and Arbitration Clauses Proclamation 1902.

For the purposes of this section a lease shall in the case of Crown land include any title under which such land is held and lessee shall include the holder of any such title.

How compensation to lessee under last preceding section to be paid.

18. When any lease is determined under the last preceding section the amount due to the lessee as compensation shall be paid out of the Colonial Treasury in the case of Crown land and in the case of private land by the owner of such land and the Colonial Treasurer in shares proportionate to the respective interests of the owner and the Crown in the mine.

Notice to be given to owner of private land affected before issue of Proclamation.

19. No proclamation of a mine or mining area on private land shall be issued except with the consent of the owner of such land until after three months from the date of a notice to him by the Commissioner of the Lieutenant-Governor's intention to issue such a Proclamation. Such notice shall be served personally on the owner if possible or on his duly authorized agent and shall also be published three times in the *Gazette*.

Cost of surveys.

20. The cost of the survey of any mine or mining area under this Ordinance shall be paid by the Colonial Treasurer; but the cost of the survey of any alluvial digging proclaimed on private land shall be paid by the owner thereof.

CHAPTER IV.

RIGHTS OF OWNER OF LAND.

21. Every owner of private land may without taking out any licence by himself or by others employed by him for that purpose prospect thereon for precious stones and shall be under the same obligations as such prospector of giving the notice and making the declarations required in section *eight* of this Ordinance; and if he shall fail to do so he shall be liable to the penalties provided in the said section.

Owner of land may prospect thereon without licence and is under the obligations of any prospector making a discovery. Owner's share of a proclaimed mine.

*22. (1) When the place where precious stones have been discovered shall be proclaimed a mine under the provisions of this Ordinance the owner of the land on which the said mine or any portion thereof is situated shall be entitled to an undivided four-tenths share in such mine or portion thereof as the case may be; provided always that in the case of a mine proclaimed under this Ordinance at a place where precious stones were discovered and the discovery notified in accordance with the provisions of Law No. 22 of 1898 prior to the taking effect of this Ordinance if the whole area of the mine or portion thereof as proclaimed is less than two hundred and twenty-five thousand square feet the owner shall be entitled to such undivided proportion thereof as an area of ninety thousand square feet bears to the whole area of the mine or portion thereof as aforesaid.

(2) Whenever the owner of land on which a mine or portion thereof is situated is entitled under the last preceding sub-section to the whole of such mine or portion as the case may be he shall pay licence moneys thereon to the revenue officer of the district at the rate of ten shillings per month for every nine hundred square feet of area included in such mine or portion thereof as the case may be; and it shall be competent for the Colonial Treasurer to recover any licence moneys in arrear by action at law in any competent court and judgment given in respect of such claim shall be executed in similar manner to that in which an ordinary judgment of such court is executed.

23. The owner shall be entitled after the expiration of six months from the date of the lodging of the declaration mentioned in section *eight* of this Ordinance to beacon off and mine within an area agreed to by the Commissioner and as nearly as possible equivalent to the proportion to which he is entitled under the last preceding section if the Lieutenant-Governor should not see fit to proclaim a mine on his land in the same manner as if such Proclamation had been issued; provided that nothing herein contained shall be deemed or taken in any way to prevent the Lieutenant-Governor at any time from proclaiming a mine on such land including the area beacons off as aforesaid.

Owner may dig for precious stones to which he is entitled even if Lieutenant-Governor does not see fit to proclaim mine on land.

* See Act No. 31, 1908, section *two*.

Owner's share of licence money on stands.

Meaning of term "owner".

Lessee of land with owner's rights to stones entitled to owner's rights.

24. The owner shall be entitled to demand and receive out of the public revenues once every three months one-half the licence moneys paid to the Colonial Treasurer in respect of stands in a stand township proclaimed on his land.

25. The term "owner" shall include all persons duly registered as the proprietors of land in the office of the Registrar of Deeds but if in any case two or more persons shall be registered as the owners of any land in undivided shares all rights and powers conferred upon or reserved to the owner of such land by this Ordinance shall be deemed and taken to be jointly and not severally conferred upon or reserved to such persons.

26. (1) Every lessee of private land in the lease of which the owner shall have agreed to let such land together with his rights in respect of precious stones shall provided such lease be duly registered in the office of the Registrar of Deeds be entitled during the term of his lease to such rights and privileges accruing to the owner of such land under this Ordinance as shall have been conferred on him by such lease and shall be subject to all obligations imposed by this Ordinance in respect thereof; provided that at the expiration of such lease every right granted to or held by him as such lessee shall revert to the owner.

(2) When in the title to private land or by some notarial deed registered in the Deeds Office the right to the precious stones therein is reserved to some other person than the registered owner such person will on the discovery of precious stones on such land be entitled to the rights conferred by this Ordinance on the owner in respect of such precious stones and will be subject to the obligations imposed in respect thereof.

CHAPTER V.

WORKING OF A MINE.

Share of the Crown in a mine.

27. (1) The Crown shall be entitled to the undivided share in any mine or portion of a mine on private land which remains after deducting the share to which the owner is entitled under section *twenty-two* of this Ordinance and in case the mine or portion thereof be on Crown land to the undivided share therein after deducting the share to which the discoverer is entitled under section *nine* of this Ordinance.

(2) The Commissioner shall issue a certificate to the owner or discoverer as the case may be certifying the extent of the share in the mine held by him and such certificate shall be registered in the proper office for registering mining rights and shall also be registered against the title-deeds of the private land on which such mine is situated.

28. The owner of land on which a mine is situated shall be entitled to work the whole of the said mine for the purpose of winning precious stones therefrom and shall within three months after the proclamation of such mine notify to the Commissioner in writing whether he intends to do so or not.

Owner may claim to work mine.

29. *Repealed by Act No. 31, 1908, section one.*

Capital to be provided by owner.
Division of profits.
Meaning of term "capital".

30. *Repealed by Act No. 31, 1908, section one.*

31. *Repealed by Act No. 31, 1908, section one.*

32. The owner shall carry on mining operations in the mine to the satisfaction of the Commissioner unless work is suspended with the consent of the Commissioner for any of the following reasons :

Mining operations to be carried on to satisfaction of Commissioner.

- (a) that time is required for the erection or repair of machinery or shafts ;
- (b) the influx or scarcity of water ;
- (c) a fall of reef on the *mine* ;*
- (d) scarcity of labour.

33. All differences which may arise between the owner and the Crown in respect of the carrying out of the provisions of this Chapter or in respect of any matter affecting their respective interests in the mine shall be referred for final decision to a board on which the owner and the Crown shall be represented in proportion to their respective shares in the mine. The persons representing the Crown on such board shall be appointed by the Lieutenant-Governor.

Settlement of difference.

34. If the owner

- (a) refuses to work the said mine ; or
- (b) fails to notify to the Commissioner whether he intends to do so or not within the period mentioned in section *twenty-eight* ; or
- (c) fails to find the necessary capital for the working of the said mine within twelve months after its proclamation ; or
- (d) fails to carry out the decision of the board mentioned in the last preceding section in respect of any differences referred to such board ;

Lieutenant-Governor may call for tenders for working of mine on certain events happening.

the Lieutenant-Governor may call for public tenders for the working of the said mine under contract on such terms and conditions as may be agreed on between the Lieutenant-Governor and the owner ; provided always that in case the Lieutenant Governor and the owner cannot agree such terms and conditions shall be decided by the board mentioned in the last preceding section ; and provided further that any profits divisible between the Crown and the owner under any such contract as aforesaid shall be divided in proportion to their respective holdings.

* As in *Gazette* ; in Ordinance 1903 the word "men" is here given.

If no satisfactory tender the Lieutenant-Governor may lease mine to owner.

35. It shall be lawful for the Lieutenant-Governor in case no satisfactory tender is obtainable for the working of the mine under the last preceding section to lease the said mine to the owner on such terms as may be agreed on.

Transfer and mortgage of owner's interest.

36. It shall be lawful for the owner with the consent of the Lieutenant-Governor to transfer or mortgage his interest in a mine. Such consent however shall only be required in any case in which the Crown holds an interest in the mine. The registration of any such transfer or mortgage shall be effected according to the provisions of the Registration of Mining Rights Proclamation 1902 or any amendment thereof and the regulations made thereunder and the transfer of any such interest as aforesaid shall be subject to the duties imposed by the provisions of the Transfer Duty Proclamation 1902 in respect of transfers of mining rights issued under Law No. 15 of 1898 or any amendment thereof.

Definition of "owner" in this Chapter.

37. The term "owner" in this Chapter shall include any person becoming entitled to the rights conferred by this Ordinance on the owner of land on which a mine is proclaimed.

Mine on Crown land.

38. The provisions of the preceding sections of this Chapter shall apply *mutatis mutandis* to a mine proclaimed on Crown land the discoverer in such case having the rights and obligations conferred on the owner by the said sections.

CHAPTER VI.

ABANDONED MINES AND PORTIONS OF MINES.

Abandonment of any portion of a mine.

39. The registered holder of any holding in a mine shall be entitled to abandon the whole or any portion of such holding on giving notice thereof to the Registrar in writing and thereupon such holding or portion thereof shall be deemed and taken to be abandoned. A note shall be made by the Registrar in the proper books of his office of the fact of such abandonment and the date thereof.

Lease of abandoned mine or abandoned portion of mine.

40. It shall be at all times lawful for the Lieutenant-Governor to grant a lease of any mine or part of a mine which has been abandoned as aforesaid for such period and on such terms as he shall think fit particulars of which shall be published in the *Gazette*.

CHAPTER VII.

ALLUVIAL DIGGINGS.

A.—Duties and Rights of Discoverer.

Discoverer's claims in a proclaimed alluvial digging.

41. The holder of a licence to prospect who shall prove to the satisfaction of the District Registrar with whom he has lodged the declaration mentioned in the *eighth* section of this Ordinance that he has found precious stones in alluvial and that there are

reasonable prospects for believing that they exist in payable quantities shall receive a certificate from the District Registrar that he is entitled to select fifty claims of a size hereinafter provided in block at the place where such precious stones have been found; and no licence money shall be payable on the said claims whilst they are held by such discoverer in his own right; provided always that the Commissioner is satisfied that a genuine discovery has been made. Upon the granting of such certificate as aforesaid all prospecting except by the holder thereof at the place where such discovery was made and within such distance therefrom as the Commissioner may determine shall cease.

B.—Right of the Owner of Private Land on which an Alluvial Digging is proclaimed.

42. When the place where precious stones have been discovered shall be proclaimed an alluvial digging or portion of an alluvial digging under the provisions of this Ordinance the owner of the property on which the said diggings or portions thereof is situate shall be entitled to select next after the discoverer one hundred claims or a number of claims therein equal to three-tenths of the extent of his land proclaimed whichever of the two is greater on payment by him of the licence moneys thereon one month in advance. If such owner is also the discoverer he shall in addition be entitled to the claims mentioned in the last preceding section.

Owner's claim.

43. The owner of any land on which any alluvial digging is declared shall be entitled to demand and receive out of the public revenue half of the licence moneys collected in respect of such digging and the persons appointed in that behalf shall be bound to keep books showing the amount of all such moneys and shall account and pay over to such owner at the end of every three months all sums of money due to such owner as aforesaid and shall afford to such owner at all reasonable times inspection of such books.

Owner's share of licence money.

44. If the Lieutenant-Governor shall not see fit to proclaim an alluvial digging at the place where precious stones have been discovered in alluvial within three months after the date of the certificate mentioned in section *forty-one* of this Ordinance the owner and the discoverer shall be entitled to mark off and work the claims to which he is entitled under the preceding sections as if an alluvial digging had been proclaimed; provided that such claims shall be registered and licence moneys paid thereon as if they were situated on a proclaimed alluvial digging.

Owner's rights if no digging proclaimed.

C.—Distribution of Claims in an Alluvial Digging.

45. After an alluvial digging has been proclaimed and after the owner and discoverer have selected the claims to which they are entitled under this Ordinance the remaining area proclaimed

Pegging of claims by public.

shall be available for the pegging of claims by the public; provided always that where such remaining area shall in the opinion of the Lieutenant-Governor be too small to be suitable for public pegging it shall be lawful for the Lieutenant-Governor to sell or otherwise dispose of the claims in such remaining area on such terms as he may think fit.

One claim to be pegged off by each male person over age of eighteen.

46. Save as is otherwise provided in the last preceding section it shall be lawful for any white male person over the age of eighteen years to obtain a licence at the office of the District Registrar entitling him to peg off one claim on the area proclaimed.

Pegging off between sunset and sunrise and on Sunday.

47. No such pegging off as aforesaid shall be done between sunset and sunrise or on Sundays. Pegging off at such prohibited times shall be considered illegal and shall give no rights whatever.

In pegging claims regulations made under Law No. 15 of 1898 to apply.

48. In pegging off claims as aforesaid the regulations made at any time under Law No. 15 of 1898 or any amendment thereof in respect of the pegging of claims shall *mutatis mutandis* apply.

Penalty provided for wilfully pegging off a claim in excess of size provided by Ordinance.

49. Any person who shall wilfully peg off a claim in excess of the size provided by this Ordinance shall be liable on conviction thereof to a fine not exceeding one hundred pounds or to imprisonment with or without hard labour for a period not exceeding six months and shall be liable to forfeit the claim pegged out by him.

Size of claims in alluvial diggings.

50. The size of a claim in an alluvial digging shall be one hundred and fifty feet square.

Licence moneys on claims in alluvial diggings.

*51. The licence money payable by the holders of claims or portions of claims in any alluvial digging situate on Crown land or on private property shall be such as may be fixed by the Lieutenant-Governor from time to time; provided that when no sum has been so fixed it shall be one pound per month payable in advance for each claim or portion of claim until altered by the Lieutenant-Governor as aforesaid.

Right of claimholder to piece of ground as residence.

52. Every registered claim holder in an alluvial digging which may be proclaimed under the provisions of this Ordinance shall while working his claim be entitled to the use and occupation without extra payment of a piece of ground within the proclaimed area of such digging for the purpose of a residence for such claimholder and accommodation for his employees. The said piece of ground shall be marked out for each claimholder by the inspector.

* Licence moneys have been fixed for alluvial diggings, Christiana, by Govt. Notices Nos. 527, 1906 (*Gazette*, 1/6/06), and 1067, 1906 (*Gazette*, 19/10/06); licence moneys on alluvial claims in river beds by Govt. Notice No. 294, 1907 (*Gazette*, 8/3/07); licence moneys, alluvial claims, on Goedchoop No. 78, Cawood's Hope No. 79, Catherina No. 20, Honesty No. 40, Geluk No. 24, Bloemhof, by Govt. Notice No. 990, 1909 (*Gazette*, 27/8/09).

53. Any person pegging out a claim in an alluvial digging who shall fail to take out a claim licence for the said claim within a period of three days thereafter shall be deemed to have abandoned the same and the District Registrar shall thereupon declare the same to be abandoned. Such claim licence shall be as nearly as possible in the form set forth in schedule one to this Ordinance.

Non-regis-
tration of
claim to be
considered as
abandonment.

54. It shall be lawful for any claimholder in an alluvial digging once during the month for which he holds a claim licence in such digging and under such licence to move the pegs defining the boundaries of his claim to any other unoccupied place in the same digging and there select a claim; provided that notice thereof shall be given to the beacon inspector of such digging and on failure to give such notice such claimholder shall be liable to a fine not exceeding ten pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Claimholder
allowed to
move pegs to
another spot
in same
digging once
during month
for which he
holds licence.

D.—Abandoned Alluvial Diggings.

55. The provisions of sections *thirty-nine* and *forty* of this Ordinance shall apply *mutatis mutandis* to alluvial diggings.

Lieutenant-
Governor
may grant
lease of an
abandoned
alluvial
digging.

E.—Diggers' Committee.

*56. It shall at all times be lawful for the Lieutenant-Governor to make such rules and regulations for the election of a diggers' committee at any alluvial digging or portion thereof as he may deem fit and to define from time to time as occasion may require the duties powers functions and authorities of such diggers' committee and to make rules for the guidance of the same.

Lieutenant-
Governor to
make rules
for diggers'
committees.

57. The Lieutenant-Governor may direct that one diggers' committee shall be elected for one or more alluvial diggings as he may deem advisable and in such manner as he may deem fit.

Lieutenant-
Governor
may direct
election of
diggers'
committee.

58. The Lieutenant-Governor may at any time direct that any diggers' committee shall be abolished or dissolved.

Lieutenant-
Governor
may abolish
committee.

CHAPTER VIII.

COMPOUNDS AND SEARCHING OF NATIVES.

59. No coloured person employed in any mine or digging proclaimed under this Ordinance shall be kept in any compound except under a contract voluntarily entered into by him nor in such case for a longer period than three months but such contract may be renewed from time to time for any period not exceeding three months.

Coloured
persons not
to be kept
in compound
except under
voluntary
contract.

* For rules and regulations, Diggers' Committee, Christiana, see Govt. Notices Nos. 1203, 1904 (*Gazette*, 18/11/04), 485, 1905 (*Gazette*, 2/6/05), 694, 1906 (*Gazette*, 13/7/06).

Claim-holder to give notice of intention to erect compound.

60. No holder of any interest in a mine or alluvial digging shall erect a compound for the accommodation of coloured employees until he shall have given notice of his intention to do so to the inspector accompanied by plans in duplicate and shall have satisfied the said inspector that proper sanitary arrangements are made in respect of the said compound.

Wages payable only in current coin. If otherwise contract null and void.

61. In all contracts to be hereafter made for the hiring of any coloured person employed in or about any mine or digging in this Colony proclaimed under this Ordinance the wages of such person shall be made payable in the current coin of the Colony and not otherwise and if in any such contract the whole or part of such wages shall be made payable in any manner other than the current coin aforesaid such contract shall be null and void.

Labour contract declared null and void if it contains any clause stipulating where how or with whom any portion of wages shall be expended.

62. If in any contract hereafter to be made between any coloured person as aforesaid and his employer any provision shall be made directly or indirectly respecting the place where or the manner in which or the person or persons with whom the whole or any part of the wages due or to become due to any such coloured person shall be laid out or expended such contract shall be null and void.

Payment of wages by the delivery of goods or otherwise than in current coin null and void.

63. The entire amount of the wages earned by and payable to any such coloured person as aforesaid shall be actually paid to him in the current coin of the Colony and every payment made to him by his employer of or in respect of such wages by the delivery to him of goods or otherwise than in the current coin aforesaid shall be null and void.

When whole or part of wages have not been paid in current coin employee is entitled to recover same by action at law.

64. Every such coloured person as aforesaid shall be entitled to recover from his employer in any manner by law provided the whole or so much of his wages as shall not have been actually paid to him in the current coin of this Colony; and in any action suit or other proceeding brought by such coloured person the defendant shall not be allowed to make any set off or to claim any reduction of the plaintiff's demand by reason or in respect of any goods wares or merchandise had or received by the plaintiff as or on account of his wages.

Employer cannot maintain action against coloured person in respect of any goods supplied on account of wages.

65. No employer of any such coloured person as aforesaid shall have or be entitled to maintain any suit or action against such coloured person for or in respect of any goods wares or merchandise sold delivered or supplied on account of wages to such coloured person at any shop kept by or belonging to the said employer or in the profits of which he would have any share or interest.

Employer of coloured persons employed on compounds may only sell necessary goods to them.

66. Where coloured persons employed as aforesaid are located or reside in any buildings or within any compound or place wherein or whereat they may be detained under any restrictions for the prevention of theft of precious stones or otherwise it shall not be

competent under any circumstances for the employer of such coloured persons or for any one acting for such employer or under any agreement with him to sell any goods wares or merchandise other than those that shall be reasonably necessary for the use and well-being of such coloured persons during the period they may be detained under such restrictions.

67. (1) So soon as may be after the passing of this Ordinance it shall be lawful for the Lieutenant-Governor to appoint an officer to be styled inspector of compounds who shall be charged with the duty and invested with the power of inspecting from time to time all compounds and aiding in the enforcement of the aforesaid provisions. Such officer shall at all reasonable times be admitted into any compound or mine by the owner or person in charge thereof and shall have access to all parts thereof and shall be at liberty to inspect any goods wares or merchandise sold or for sale therein and all books and accounts relating to such goods wares or merchandise and he shall have opportunity for free communication therein with all or any of the coloured persons therein confined or working.

Appointment powers and duties of inspector of compounds and penalty for obstructing him in execution of the same.

(2) The said inspector of compounds shall be deemed and taken for all legal purposes to have full *locus standi in judicio* and to represent every such person as aforesaid for the purpose of securing the due performance and observance of all duties towards such persons imposed by any law for the regulation of such compounds and for the purpose of protecting generally the rights of such persons.

(3) It shall be lawful for the Lieutenant-Governor from time to time to frame and publish in the *Gazette* regulations defining more particularly the duties and powers of the said inspector of compounds and the time place and manner for the performance of such duties and the exercise of such powers.

(4) Any person obstructing such officer in the discharge of his duty in connection with compounds as aforesaid or refusing or neglecting to allow him to have access or to inspect as aforesaid shall upon conviction before the resident magistrate of the district be liable to a fine not exceeding fifty pounds or in default of payment to imprisonment with or without hard labour for any period not exceeding one month unless such fine be sooner paid.

68. It shall be lawful for the Commissioner from time to time to make regulations for the carrying out and enforcing of a proper and efficient system of searching all coloured persons employed in and about a mine or digging; and by such regulations to impose such fines and penalties for the contravention thereof as he may think fit. Such regulations shall after being approved of by the Lieutenant-Governor be published in the *Gazette* and on such publication shall be of full force and effect.

Regulations for searching coloured persons.

CHAPTER IX.

STANDS.

Lieutenant-Governor may select stands for public purposes.

69. In any mining area or alluvial digging proclaimed under this Ordinance the Lieutenant-Governor shall have the right to select without payment as many sites of such size as may be necessary for public buildings sanitary purposes burial grounds and such like purposes; provided that such sites shall not be so situated as to interfere with the proper and efficient working of the mine or to any claims in the digging.

Proclamation of stand townships in mining areas.

*70. It shall be lawful for the Lieutenant-Governor to cause any portion of the mining area or alluvial digging proclaimed under this Ordinance to be surveyed into stands and to cause it to be proclaimed as a stand township. The preferent right to or lease of such stands shall be sold by public auction by the Commissioner and the proceeds of the sale after deduction of the expenses shall be paid to the registered owner of the land. The licence moneys received in respect of such stands shall be paid to the Colonial Treasurer.

Size of stands.

71. The size of such stands as aforesaid and the licence money paid in respect thereof shall be such as may be fixed by the Lieutenant-Governor by Proclamation in the *Gazette*.

Provisions of certain laws to apply to stands in stand townships.

72. The provisions of Law No. 15 of 1898† or any amendment thereof and the provisions of the Registration of Mining Rights Proclamation 1902† or any amendments thereof and the provisions of the Transfer Duty Proclamation 1902 and of any other law relating to stands in stand townships proclaimed under Law No. 15 of 1898 or any amendment thereof shall apply *mutatis mutandis* to stands in stand townships proclaimed under this Ordinance.

CHAPTER X.

MISCELLANEOUS.

Penalty for mining or digging without prospecting licence.

73. Any person prospecting for precious stones without a prospecting licence on Crown land or on private land unless he be the owner thereof shall on conviction be liable to a penalty not exceeding one hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding twelve months and any person who may be convicted before a competent court of contravening any of the regulations framed under the provisions of this Ordinance shall be liable to such penalties as may be by the said regulations prescribed not in any case exceeding one hundred pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

By or against whom actions are to be brought.

74. All actions brought by or against a diggers committee shall be brought by or against the chairman of such committee.

* See Act No. 25, 1907, section *eighty-eight* (2).

† Repealed.

75. (1) When any portion of land proclaimed an alluvial digging is discovered to be a pipe notice of such discovery shall be given by the person making it similar to that required by section eight of this Ordinance and on failure to do so he shall be liable to the penalties provided in that section.

Discovery of a pipe on an alluvial digging.

(2) It shall be lawful for the Lieutenant-Governor to proclaim a mine at the place where such discovery is made and thereupon the same provisions shall apply as if the said land had not been proclaimed an alluvial digging; provided that a reasonable time shall be allowed to enable any holder of an alluvial claim within the area proclaimed a mine to work out his claim to a depth of ten feet from the surface; and provided further that if such discovery be on private land the discoverer shall be entitled to an undivided fourth part of the share to which the owner may be entitled under this Ordinance.

*76. Of the net produce of any mine accruing to the Crown under the provisions of section thirty of this Ordinance one half shall be devoted in such manner as may be prescribed by any law or by any regulation lawfully made by the Lieutenant-Governor to the redemption of any loan lawfully raised by the Lieutenant-Governor. The other half shall be used and applied in such manner as the Lieutenant-Governor with the advice and consent of the Legislative Council shall decide.

Application of net produce of any mine accruing to the Crown under this Ordinance.

77. This Ordinance shall apply to every mine and alluvial digging proclaimed after the taking effect thereof whether the discovery of precious stones in the area proclaimed was made before or after such taking effect and may be cited as the Precious Stones Ordinance 1903.

Application of Ordinance and title.

SCHEDULE I.

FORM NO. 1.

Prospecting Licence.

Licence is hereby granted to A. B. to search and prospect for precious stones on Crown lands throughout this Colony under the provisions of the Precious Stones Ordinance 1903 for the period of.....from.....to.....

District Registrar.

NOTE.—Special attention is called to the provisions of sections four five and six of the aforesaid Ordinance.

FORM NO. 2.

Claim Licence.

This is to certify that.....of.....is the registered holder of claim No.....situate in the.....alluvial diggings and that the licence money for the same has been paid in advance up to the.....

Registrar.

Office of Registrar of Mining Rights
.....190....

* See Ordinance No. 21, 1905, section one.

SCHEDULE II.

FORM OF DECLARATION.

I.....of.....do solemnly and sincerely declare that the rough and uncut diamonds hereinafter specified were found by me in the ground held in my name under Prospecting Licence No..... during the month of.....190....

.....
District Registrar of.....

SPECIFICATION OF DIAMONDS MENTIONED IN THE FOREGOING DECLARATION.

No. of loads of 16 cubic feet.	No. of stones of 10 carats and upwards.	Weight of any single stone above the value of £100.	Total weight of Parcel.	Total value of Parcel.

No. 68 of 1903.]

[Promulgated, 7th August, 1903.

*ORDINANCE

TO AUTHORIZE THE SALE OF MALT LIQUOR TO PERSONS EMPLOYED
IN RAILWAY CONSTRUCTION AND TO FURTHER AMEND IN CERTAIN
RESPECTS THE "LIQUOR LICENSING ORDINANCE 1902."

Assented to 30th July, 1903.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with
the advice and consent of the Legislative Council thereof as follows :

1. (1) The Receiver of Revenue for the district in which it
is proposed to licence the sale of liquor under this section may
upon being authorized in writing thereto by the Commissioner
of Railways issue a licence called a "Railway Employees Liquor
Licence" to any person approved of by such Commissioner under
the following conditions :

Power to
Commissioner
of Railways
to issue
"Railway
Employees
Liquor
Licences"
under certain
conditions.

(a) such licence shall authorize the sale by the holder thereof
of ale beer porter cider perry and hop beer only and in
quantities not exceeding one reputed quart ;

(b) liquor sold under such licence may be consumed on or
off the premises in which it is sold ;

(c) such licence shall authorize a sale only to white male persons
of the age of sixteen years and upwards who are employed on
the construction of any railway works in this Colony.

(2) There shall be paid in respect of such licence to the revenue
officer issuing it the sum of two pounds for every month or portion
thereof for which such licence shall be issued.

(3) Such licence shall be available for such place for such
period and for the sale of the above-mentioned liquors on such
days and during such hours as shall be stated on the licence.

(4) Any licence so granted may at any time be cancelled by
the said Commissioner by notice to the licensee. A copy of such
notice shall also be sent by the Commissioner to the Receiver of
Revenue who issued such licence.

(5) Save as otherwise provided in this Ordinance the holder
of such licence shall for the purpose of the Liquor Licensing Ordinance
1902 and any Ordinance amending the same be deemed to
be the holder of a general retail liquor licence.

2. The Liquor Licensing Ordinance 1902 shall be and is hereby
amended by substituting the words "one quarter" for "one
half" and inserting the word "malt" after the word "restaurant"
in sub-section (1) of section *nineteen* of the said Ordinance.

Amendment of
section *nineteen*
Liquor Licens-
ing Ordinance
1902.

3. *Repealed by Act No. 33, 1909, section one.*

Amendment of
section *thirty-two*
Liquor Licensing
Ordinance 1902.
Title.

4. This Ordinance may be cited as the Liquor Licensing
(Railway Employés and Amending) Ordinance 1903 and shall
be read as one with the Liquor Licensing Ordinance 1902 the
Liquor Licensing Amendment Ordinance 1903 and the Liquor
Licensing Further Amendment Ordinance 1903.

* See Act No. 33, 1909.

No. 69 of 1903.]

[Promulgated.]

ORDINANCE

TO FURTHER AMEND THE JURY ORDINANCE 1902.

Assented to 9th December, 1903.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

Power to
frame jurors'
lists for Wit-
watersrand
District con-
sisting of
persons
resident in
Johannes-
burg only.

1. Notwithstanding anything in section *seven* of the Jury Ordinance 1902 contained it shall be lawful for the person assigned to frame the list of jurors of the Jury District for the Witwatersrand District for the period ending the 31st day of December 1904 and any succeeding period to frame such list in such a manner that it consists of persons who are qualified to be jurors and are resident within the limits of the municipality of Johannesburg.

Validation
of list so
framed
before date
of this
Ordinance.

2. The list of jurors of the Jury District for the Witwatersrand District framed before the passing of this Ordinance in manner described by the last preceding section for the period ending the 31st December 1904 shall be as valid and effectual for all intents and purposes as if framed after the passing of this Ordinance.

Title.

3. This Ordinance may be cited as the Jurors (Witwatersrand District) Ordinance 1903 and shall be read as one with the Jury Ordinance 1902 and any Ordinance amending the same.

1904.

No. 1 of 1904.] [Promulgated 22nd January, 1904.]

***ORDINANCE**

TO PROVIDE FOR THE ADMISSION OF CERTAIN PERSONS AS
ATTORNEYS OF THE SUPREME COURT.

Assented to 21st January, 1904.

WHEREAS under the rules regulating the admission of attorneys in the late South African Republic every male person who had passed the necessary examinations and served during a period of three successive years as clerk to the State Attorney of the late South African Republic or as clerk to any of the Judges or as Registrar Assistant Registrar or Taxing Master of the High Court of the late South African Republic or as Registrar of the High Court of Swaziland was competent to be admitted to practise as an attorney of the High Court of the late South African Republic;

And whereas certain persons have already under the said rules served in one or other of the capacities aforesaid in such manner as would have entitled them to admission as aforesaid upon completion of the said term of service and upon passing the necessary examinations;

And whereas it is desirable to make special provision relating to the admission of such persons as attorneys of the Supreme Court of this Colony;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. Any person of full age who produces satisfactory proof that he has served as clerk to the State Attorney of the late South African Republic or as clerk to any of the Judges of the High Court of the said Republic or as Registrar Assistant Registrar or Taxing Master of the said High Court or as Registrar of the High Court of Swaziland for such a continuous period up to and including the 30th day of September 1899 as would when added to the period mentioned in the third proviso to this section make a period of three years in all shall be competent to be admitted and enrolled as an attorney of the Supreme Court of the Transaal:

Persons entitled to be admitted under this Ordinance.

(1) that such person if he had served three consecutive years in the capacities aforesaid and had passed the necessary examinations would formerly have been entitled to admission as an attorney of the said High Court of the late South African Republic;

(2) that such person has passed the examination mentioned in sub-section (b) or the examination referred to in sub-section (c) of section *eleven* of the Administration of Justice Proclamation 1902;

* See Act No. 33 of 1908.

(3) that such person has served with some practising attorney in this Colony for a period of not less than one year under a contract in writing duly registered with the Registrar of the Supreme Court of this Colony and with the Secretary of the Incorporated Law Society of this Colony.

Title.

2. This Ordinance may be cited as the Attorneys Admission (Amendment) Ordinance 1904.

No. 3 of 1904.]

[Promulgated 29th January, 1904.]

ORDINANCE

TO AMEND THE TRADE MARKS REGISTRATION PROCLAMATION
1902.

Assented to 28th January, 1904.

WHEREAS it is desirable to amend in certain respects the Trade Marks Registration Proclamation 1902;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. The Trade Marks Registration Proclamation 1902 shall be and is hereby amended as follows;

(a) By the addition at the end of section *seven* thereof of the following sub-sections;

For text see Transvaal Proclamation No. 23, 1902, section seven (6) and (7).

(b) By the addition at the end of section *seventeen* of the said Proclamation of the following sub-section;

For text see Transvaal Proclamation No. 23, 1902, section seventeen (e).

2. This Ordinance may be cited as the Trade Marks Registration Amendment Ordinance 1904.

Amendment
of section
seven of
Proclamation
(Transvaal)
No. 23 of
1902.

Title.

No. 4 of 1904.]

[Promulgated 29th January, 1904.]

ORDINANCE

TO CORRECT ERRORS IN CERTAIN OF THE LAWS IN FORCE IN THIS COLONY.

Assented to 28th January, 1904.

WHEREAS it is expedient to make verbal corrections in certain laws in force in this Colony;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. The laws enumerated in the first column of the Schedule hereto shall be and are hereby amended as from the date of their promulgation to the extent set forth opposite each such law in the second column of the said Schedule.

2. This Ordinance may be cited as the Correction of Errors in Laws Ordinance 1904.

SCHEDULE OF LAWS AMENDED.

Laws.	Amendments.
*Proclamation No. 24 of 1900	In section <i>fourteen</i> for the words "Commandant-General" shall be substituted the words "Inspector-General".
Proclamation Transvaal No. 11 of 1902	In section <i>forty-nine</i> sub-section (5) (a) for the word "protested" when it first occurs shall be substituted the word "presented".
Ordinance No. 10 of 1903 ..	In section <i>thirteen</i> for the words "Proclamation No. 6 of 1900" shall be substituted the words "Proclamation No. 6 of 1901".
Ordinance No. 24 of 1903 ..	In section <i>two</i> the word "expedient" when it first occurs shall be omitted.
Ordinance No. 38 of 1903 ..	In section <i>eight</i> by the omission of the words "section <i>twenty-four</i> of".
Ordinance No. 57 of 1903 ..	In section <i>eight</i> for the words "section <i>ten</i> " shall be substituted the words "section <i>nine</i> ". In section <i>fifteen</i> for the words "section <i>fourteen</i> " shall be substituted the words "section <i>twelve</i> ".
Ordinance No. 58 of 1903 ..	In section <i>sixty-six</i> shall be substituted the words "under section <i>seventy-three</i> of this Ordinance or under any law establishing Urban District Boards" for the words "under the Urban District Boards Ordinance 1903."
*Ordinance No. 60 of 1903 ..	In section <i>twenty-one</i> for the word "rendered" the word "tendered" shall be substituted. In section <i>thirty-six</i> sub-section (3) for the word "fifth" the word "third" shall be substituted. In section <i>forty-six</i> for the words " <i>eighty</i> " and " <i>eighty-one</i> " shall be substituted the words " <i>seventy-seven</i> " and " <i>seventy-eight</i> " respectively.
Ordinance No. 66 of 1903 ..	In section <i>five</i> clause (a) for the words "Settlers Ordinance 1903" shall be substituted the words "Settlers Ordinance 1902"

* Repealed.

[1234]

Correction of laws as set forth in the schedule.

Title.

No. 5 of 1904.]

[Promulgated 29th January, 1904.

ORDINANCE

TO AMEND THE LAW RELATING TO CUSTOMS.

Assented to 28th January, 1904.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:

1. The Customs Management Ordinance 1902 is hereby amended

Amendment
of Ordinance
No. 23 of 1902.

(a) by inserting in section *sixteen* after the word "keep" the words "within this Colony".

(b) by adding at the end of section *seventeen* the words "and any person failing refusing or neglecting to produce proof of any of the matters within this section referred to shall be liable to the penalties provided by section *fifty-two* of this Ordinance".

(c) by substituting for section *twenty* the following:

For text see Ordinance No. 23, 1902, section twenty.

(d) By substituting for the words "one hundred" in section *twenty-two* the words "twenty-five".

(e) By substituting for section *forty-one* the following:

For text see Ordinance No. 23, 1902, section forty-one.

(f) By adding in section *fifty* after the word "document" where it first occurs the words "to be used in connection with the entry of any goods or".

2. This Ordinance may be cited as the Customs Management Ordinance 1902 Amendment Ordinance 1904. Title.

Still law }
Repealed except for section (d)

No. 6 of 1904.]

[Promulgated 12th February, 1904.]

ORDINANCE

TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE
THEFT OF STOCK AND PRODUCE.

Assented to 30th January, 1904.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Repeal of
laws.

1. Law No. 4 of 1891 and Law No. 2 of 1894 are hereby repealed.

Interpreta-
tion of terms.

*2. In the interpretation of this Ordinance the following terms shall have the meanings hereinafter assigned to them that is to say;

“Circuit Court” includes the Witwatersrand High Court;

“produce” shall include all skins hides horns of stock as defined by this Ordinance as well as wool mohair and ostrich feathers;

“stock” means the male female or young or cross of an animal of any of the following kinds: horse ass kine sheep goat swine or domesticated ostrich; and the carcass or portion of the carcass of any slaughtered stock;

†“sufficient fence” when applied to wire fences shall mean a fence of not fewer than four wires and not less than three feet six inches high; in other cases any fence wall or hedge through which no stock could pass without breaking or any natural boundary through or across which no sheep would ordinarily pass;

“police officer” means any member whatever may be his rank of the South African Constabulary Town Police or any other police force lawfully established in the Transvaal;

“theft” shall embrace besides actual stealing;

- (1) receiving stolen stock or produce knowing it to have been stolen;
- (2) attempting to steal stock or produce;
- (3) and being or having been in unlawful possession of stock or produce and not being able to give a satisfactory account of such possession;
- (4) inciting to or counselling or procuring the theft of stock or produce.

* See Ord. No. 15 of 1904, secs. 35 and 36, as to evidence for theft or receiving.

† As to definition of “fence” see also Act No. 12 of 1908, sec. 25.

3. It shall be lawful for the courts of resident magistrates on the trial of any accused person for theft as defined by this Ordinance to find such accused person guilty of any of the offences embraced in the term theft as so defined although such accused person may not have been originally charged with that particular offence.

Findings under a charge of theft.

4. Subject to the provisions of the next succeeding section courts of resident magistrates shall respectively have jurisdiction to try summarily cases in which any person may be accused of the theft of any stock or produce and to punish any person convicted of any such theft as follows;

Jurisdiction of courts of resident magistrates.

(a) in the case of a first conviction by imprisonment with or without hard labour for any period not exceeding one year or by corporal punishment in any number of lashes not exceeding twenty-four or by both such first-mentioned imprisonment and such lashes;

(b) in the case of a second or any subsequent conviction within the space of three years next following a previous conviction for theft of stock or produce whether under this or any other law or under the common law by imprisonment with or without hard labour for any period not exceeding two years or by corporal punishment in any number of lashes not exceeding twenty-four or by both such imprisonment and such lashes.

5. As often as any charge of the theft of stock or produce shall be brought under the notice of any resident magistrate which charge shall from its nature or magnitude appear at any stage of the proceedings to such magistrate to be unfit to be disposed of under the limited jurisdiction conferred by this Ordinance it shall be lawful for such magistrate instead of proceeding or continuing to try the case under this Ordinance to take or convert the proceedings into a preparatory examination in manner prescribed by the Criminal Procedure Code 1903 provided that if the Attorney-General upon consideration of the preparatory examination shall be of opinion that the evidence is such as to require that the prisoner shall be put upon his trial and be of opinion also that the exercise of the jurisdiction conferred by this Ordinance will satisfy the ends of justice then and in that case the Attorney-General may remit the case for trial to the court of the resident magistrate by whom the preparatory examination was taken and such court shall thereupon proceed to try the same in manner and form prescribed for the trial of remitted cases; and in case the prisoner shall be convicted such court may pronounce upon him any sentence to which he might have been subjected under this Ordinance in case he had been tried under this Ordinance without any preparatory examination having been taken; and provided that nothing herein contained shall be deemed to deprive the Attorney-General of any power to remit such cases which may at any time be vested in him by law independently of this section.

Magistrate in certain cases empowered to commence preparatory examination.

6. (1) It shall be lawful for any court of resident magistrate upon the conviction or committal for trial or sentence

Judgment for compensation and damages.

of any person on a charge of theft of stock or produce at the request of the owner thereof or of the person authorized in writing by such owner to inquire summarily and without pleadings but in the presence of the accused person into the value of such stock or produce.

(2) Upon proof made to its satisfaction of the value of such stock or produce and of any damages which the said owner shall have sustained by the loss of such stock or produce or by the cost of a search for or other endeavour to recover the same the said court shall give judgment in favour of such owner and against the accused for such value as aforesaid together with such damages if any and such judgment shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted.

(3) No resident magistrate shall give any such judgment for any sum exceeding one hundred pounds sterling.

(4) No such judgment for such value shall be given in any case in which such stock or produce shall have been recovered by the owner before the conviction or committal for trial or sentence as the case may be of the accused person.

Execution of
civil judg-
ment :
Security.

7. No such judgment as aforesaid shall be put in execution if the person convicted or committed for trial as the case may be shall give security to the satisfaction of such court to pay the amount thereof should his conviction be confirmed upon appeal or review or should he be afterwards duly convicted when brought to trial nor shall any such judgment be put into execution unless and until the owner of the said stock or produce shall give security to the satisfaction of the magistrate to refund in case he shall by law be required so to do any sum of money which shall be levied under or upon such judgment and to make good such damages if any as the accused person shall have sustained by the execution of such judgment.

In cases of
acquittal
where
security shall
have been
given judg-
ment to be
void.

8. If any conviction of any person who shall have given such security shall afterwards be quashed on appeal or review or if any accused person who shall have given such security shall ultimately be acquitted of the theft in regard to which he was committed then the judgment aforesaid shall be null and void; provided however that nothing in this Ordinance contained shall deprive the owner of the stock or produce aforesaid to any right of civil action which he may by law be entitled to have or maintain notwithstanding the quashing of such sentence or such acquittal against the person so convicted or committed for trial.

Procedure
where civil
judgment has
been put into
execution and
conviction
quashed or
criminal
proceedings
abandoned.

9. As often as such judgment as aforesaid shall have been put into execution and the conviction be quashed on appeal or review or in the case of a committal for trial the person committed be ultimately acquitted or discharged then the court by or before which the person accused shall have been convicted or committed for trial as the case may be shall upon application of or on behalf of such person give judgment summarily and without pleadings for such sum as shall have been levied under execution and such damages if any as

referred to in section *seven* unless it shall be found by such court upon considering the evidence in the criminal case and any other evidence which may be given by the owner aforesaid and the person acquitted or either of them that upon grounds of law applicable to the decision of civil actions the said owner was and is *prima facie* entitled to have and retain such judgment as aforesaid against the person acquitted notwithstanding such acquittal.

10. In case the value of any stock or produce with the theft of which any person shall be charged and the amount of such damages as aforesaid shall not sufficiently appear upon the depositions taken on the preparatory examination or at the trial and further proof of such value or such damages shall be tendered on the part either of the owner or of the accused such further proof shall be taken down in writing and shall by such magistrate be preserved.

Further proof as to value of stolen stock.

11. As often as any charge of theft of stock or produce in regard to which any such judgment as aforesaid shall have been given by any resident magistrate shall be tried in the Supreme or any Circuit Court it shall be the duty of the resident magistrate who gave such judgment to deliver or cause to be delivered to the registrar of such court a copy of such further proof if any of value and damages as such magistrate shall have taken over and above the preparatory examination together with a statement of the date and amount of the said judgment as also a statement of the amount if any levied thereupon and the said registrar shall before during or immediately after the trial lay the same before the presiding judge for his inspection.

When criminal case tried in Supreme or Circuit Court magistrate must transmit to registrar particulars of civil judgment.

12. In case any such owner as aforesaid shall not have obtained from the committing magistrate any such judgment as aforesaid and the prisoner committed for trial or sentence shall be afterwards convicted before the Supreme or any Circuit Court then the judge before whom such conviction shall have taken place shall upon the like request as that in the *sixth* section of this Ordinance mentioned and in the presence of the prisoner inquire summarily and without pleadings into the value and damages therein referred to and give judgment for the same and such judgment shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted.

Where magistrate has given no judgment for value of stolen stock such judgment may be obtained from the judge after conviction.

13. Should any case in which any such judgment as aforesaid shall have been given by any resident magistrate be forwarded for review by a judge of the Supreme Court such magistrate shall in forwarding the record of the proceedings in such case to the Registrar of the Supreme Court to be laid before a judge in chambers for his consideration forward with such record the same particulars regarding such judgment as such magistrate is under and by virtue of the *eleventh* section of this Ordinance enjoined to deliver or cause to be delivered in cases in which the person accused is tried in the Supreme or any Circuit Court.

Where case is reviewed the particulars as to judgment for value of stolen stock is to accompany record of proceedings.

Judgment given for value of stolen stock to become void where Attorney-General declines to prosecute unless security for private prosecution is given.

Value of stolen stock recoverable from one or more persons concerned in theft.

Owner not obliged to apply but may proceed by civil action. If damages exceed £100 owner may sue for excess.

Penalty for entry upon enclosed place with intent to steal stock.

Presumptive evidence of intent to steal.

14. If in any case the Attorney-General upon considering the preparatory examination shall decline to prosecute any person against whom the committing magistrate shall have given judgment under this Ordinance then such person shall be deemed to be discharged within the meaning of section *nine* unless the person in whose favour such judgment shall have been pronounced shall within ten days give security as a private prosecutor to the satisfaction of the magistrate for the prosecution of the person accused and unless the accused person shall be so prosecuted and convicted within a further time to be fixed by the magistrate; and if such conviction shall be quashed on appeal or review the provisions of section *nine* shall also apply.

15. As often as more persons than one shall be convicted of the theft of any stock or produce or committed for trial or sentence on any charge of such theft then any such judgment as may be given for value and damages or either by any magistrate or judge against such persons jointly shall be deemed to be joint and several and may be executed against the property of any one or more of the persons who shall have been so convicted or committed for trial or sentence; provided that it shall be lawful to give judgment against any one or more of such persons without including in that judgment any of the other persons convicted or committed for trial or sentence for or in regard of the theft of the same stock or produce; and provided that no person against whom such judgment has been pronounced shall in any case recover under section *seven* or *nine* of this Ordinance more than the amount levied against himself in satisfaction of such judgment together with any damages awarded to him under section *seven*.

16. Nothing in this Ordinance contained shall be construed so as to oblige any owner of any such stock or produce to apply for any such judgment as aforesaid or to deprive him of any right of civil action which he may have against the accused person for or on account of such stock or produce; nor shall the fact of having obtained from any resident magistrate a judgment for the sum of one hundred pounds prevent the owner who obtained such judgment from suing in any competent court for any damages by him sustained over and above the said sum of one hundred pounds; nor shall the fact of judgment under section *seven* or *nine* bar any civil action by the owner who has lost the stock or produce forming the subject of the charge.

17. Any person who enters any farm or part of a farm enclosed on all sides with a sufficient fence or any kraal with intent to steal any stock which is in or upon such farm or part of a farm or kraal shall be liable upon conviction to imprisonment with or without hard labour for a period not exceeding one year or to a fine not exceeding one hundred pounds or to both such fine and such imprisonment.

18. Any person found within any farm or part of a farm enclosed on all sides with a sufficient fence or within any kraal and who when so found was not proceeding along any road or

thoroughfare on such farm or part of a farm/ shall if charged with a contravention of the last preceding/ section have the burden imposed on him of proving that he did not enter such farm or part of a farm or kraal with intent to steal the stock if any kept therein.

19. Any person charged with the theft of stock from any such kraal farm or part of a farm may be found guilty under section *seventeen* of this Ordinance.

Person charged with theft may be found guilty of contravention of section *seventeen*.

20. If there be reasonable grounds for believing that any person is or has been in unlawful possession of any stock or produce it shall be competent for any justice of the peace landholder or police officer to apprehend or cause to be apprehended such person without warrant and convey him or cause him to be conveyed in custody before any magistrate having jurisdiction and if it be found that he is or had been in possession of any such stock or produce and is not able to give a satisfactory account of such possession to such magistrate he may be charged with the crime of theft of stock or produce and dealt with accordingly.

Suspected person may be apprehended without warrant.

21. If any person is reasonably suspected to have in any sack knapsack or other covering any produce it shall be lawful for any justice of the peace landholder or police officer to detain or cause to be detained such person and examine or cause to be examined the contents of such sack knapsack or other covering and in case such person shall upon such examination be found to be in possession of any produce it shall be lawful for such justice of the peace landholder or police officer to apprehend him or cause him to be apprehended without warrant and to convey him or cause him to be conveyed before any magistrate having jurisdiction and in case he shall be unable to give a satisfactory explanation of such possession to such magistrate he may be charged with the crime of theft of stock or produce and dealt with accordingly.

Sacks, etc., of persons suspected to be conveying produce may be searched and persons apprehended without warrant.

22. Any person who shall without colour of this Ordinance wrongfully and maliciously or without probable cause apprehend any person or cause him to be apprehended shall be liable to pay a fine not exceeding fifty pounds and to pay to the apprehended person such amount not exceeding the sum of one hundred pounds as and for damages as the magistrate before whom such apprehended person is brought for trial shall award and in default of payment of the fine shall be liable to be imprisoned with or without hard labour for a period not exceeding three months unless such fine shall be sooner paid; provided that nothing in this section contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy given him by law in lieu of the remedy by this section given.

Penalty for wrongful arrest.

23. Notwithstanding anything to the contrary in any law it shall be lawful for any justice of the peace or for any police officer of such rank as the Lieutenant-Governor may from

Persons authorized to search buildings, etc., for stolen stock or produce.

time to time designate upon being satisfied that there is reason to suspect that any stolen stock or stolen produce is concealed in any building hut kraal or enclosure to search or to grant written authority to any person applying for the same to search such building hut kraal or enclosure at any time during the day or night; provided that any landowner shall in respect of any building or hut upon his own land be entitled to exercise all the powers conferred by this section upon the officers hereinbefore mentioned.

Penalty for malicious exercise of authority to search.

24. (1) Any person who shall under colour of this Ordinance wrongfully and maliciously or without probable cause apply for obtain and act upon such written authority as aforesaid or wrongfully and maliciously or without probable cause exercise the powers of search conferred by the last preceding section shall be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for any period not exceeding three months and shall also be liable to pay to the person lawfully in occupation of the building hut kraal or enclosure in question when the same was searched such sum not exceeding one hundred pounds for damages as any competent court may award.

(2) Nothing in this section contained shall have the effect of depriving any aggrieved person of the right to elect to take any other remedy allowed by law in lieu of the remedy under this Ordinance.

Purchase of produce between sunset and sunrise prohibited except at public sales.

25. (1) It shall not be lawful for any person to purchase or sell for purposes of trade any produce between the hours of sunset and sunrise; provided however that this prohibition shall not apply to any person purchasing or selling produce at any public sale.

(2) Any person contravening the provisions of the last preceding sub-section shall upon conviction be liable to a penalty not exceeding fifty pounds or to imprisonment with or without hard labour for a period not exceeding three months.

Not to apply to contract of sale where price not less than £100.

26. The provisions of the last preceding section shall not apply to any contract for the purchase and sale of produce where the purchase price paid or agreed to be paid for the said produce shall amount in value to the sum of one hundred pounds sterling or upwards.

Responsibility of auctioneer.

27. If any auctioneer or market master sells any stock which shall be proved to have been stolen he shall be personally responsible to the owner of or person who has any right in such stock for the full value thereof.

Stock buyers and traders.

28. Any person travelling about acquiring stock by purchase barter or in any other way shall obtain a certificate from every person from whom he acquires stock specifying the kind of stock and also the colour marks and number; and the person from whom he has acquired such stock shall furnish him with such a certificate. The person acquiring the stock shall exhibit such certificate when requested to do so by a justice of the peace or a police officer.

29. No one may acquire stock by purchase barter or in any other way from coloured persons or from persons having no known place of habitation without a certificate from a justice of the peace or two residents of substantial means of the neighbourhood in which the transaction takes place certifying that the transferor is entitled to transfer such stock.

Purchase of stock from coloured or unknown person.

*30. (1) Any person who shall slaughter or cause to be slaughtered any stock for sale shall retain or cause to be retained in his possession the hides taken off such animals with the brands or ear-marks attached thereto without any alteration disfiguration or effacement of the brands or marks on such hides or ears for the period of five days.

Preservation of hides.

(2) Any justice of the peace police officer owner of cattle or any other person may within the period of time mentioned in the last preceding sub-section demand an inspection of such hides and upon such demand being made the aforesaid person shall produce the same for inspection of the said justice police officer owner or other person.

(3) Any person contravening any of the provisions of this or of the last two preceding sections shall be liable upon conviction to a fine not exceeding twenty-five pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months; or to both such fine and such imprisonment.

31. This Ordinance may be cited as the Stock Theft Ordinance 1904. Title.

* See also Ord. No. 15 of 1904, sec. 22.

No. 8 of 1904.]

[Promulgated 12th February, 1904.

ORDINANCE

TO PROVIDE FOR A BOARD OF EXAMINERS UNDER THE LAND SURVEYORS ADMISSION ORDINANCE 1903.

Assented to 8th February, 1904.

WHEREAS it is desirable to constitute a Board to discharge the duties imposed on the Board of Examiners mentioned in the Land Surveyors Admission Ordinance 1903;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Appointment of Board to discharge duties of Board of Examiners imposed by Ordinance No. 55 of 1903.

1. Until the Board of Examiners of this Colony is constituted the powers and duties conferred and imposed on that Board by the Land Surveyors Admission Ordinance 1903 shall be conferred and imposed on a Board consisting of the Surveyor-General and three other members to be appointed by the Lieutenant-Governor two of whom shall be admitted surveyors of this Colony.

Appointment of Examiners.

*2. It shall be lawful for the said Board to appoint persons to examine in the subjects prescribed for the examination to be passed by candidates desiring to be admitted as Land Surveyors and to pay the said examiners such fees as the Lieutenant-Governor may approve of.

Title.

3. This Ordinance may be cited for all purposes as the Examining Board (Survey Examinations) Ordinance 1904.

* As to regulations for admission of land surveyors see Notice No. 536 of 1904 (*Gazette*, 14/10/04).

No. 9 of 1904.]

[Promulgated 12th February, 1904.

ORDINANCE

TO PROVIDE FOR THE TAKING OF A CENSUS FROM TIME TO TIME.

Assented to 8th February, 1904.

WHEREAS it is expedient to provide for the taking of a census from time to time;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

*1. It shall be lawful for the Lieutenant-Governor to appoint from time to time by Proclamation published in the *Gazette* that a census be taken at such time as shall be notified in such Proclamation.

Lieutenant-Governor to appoint taking of census.

2. It shall be lawful for the Lieutenant-Governor to appoint a fit and proper person to be called the "Commissioner of the Census" to superintend the taking of any census and at any time to appoint some other person in his place or to appoint any person to act temporarily for such Commissioner of the Census.

Lieutenant-Governor may appoint Commissioner of Census.

†3. (1) The Lieutenant-Governor may for the carrying out of the purposes of this Ordinance from time to time make rules not inconsistent with the provisions of this Ordinance and rescind revoke amend alter or add to such rules.

Lieutenant-Governor in Council may make rules.

(2) The rules may prescribe

(a) the duties of the census officers;

(b) the particulars regarding which the persons from whom and the mode in which information shall be obtained for the purposes of the census;

(c) the form of schedule to be prepared by the Commissioner of the Census for the purpose of being filled up with the particulars so prescribed.

4. The Commissioner may in writing appoint any person as enumerator or supervisor or in such other capacity as may be necessary to take or aid in taking or to supervise the taking of the census within any specified local area and may at any time revoke such appointment.

Appointment of enumerators and supervisors.

5. Every Commissioner of Census and every person appointed under section *two* or section *four* of this Ordinance shall be a census officer within the meaning of this Ordinance.

Who are census officers.

* Date for taking census was fixed on 17th April, 1904, by Proc. (Admn.) No. 18 of 1904.

† For census regulations, see Govt. Notices Nos. 469 of 1904 (*Gazette*, 25/3/04) and 573 of 1904 (*Gazette*, 15/4/04).

Occupier to allow access and permit affixing of numbers.

6. Every person occupying any land house enclosure or other place shall allow any census officer such access thereto as he may require for the purpose of the census and as may be reasonable and shall allow him to paint mark or affix on or to the property in the occupation of such person such letters marks or numbers as may be necessary for the purposes of the census.

Asking of questions by census officers.

7. Every census officer may ask all such questions of all persons within the limits of his local area as by rule made in this behalf by the Lieutenant-Governor he may be directed to ask.

Obligation to answer questions.

8. Every person of whom any question is asked under the last preceding section shall be bound to answer such question to the best of his knowledge and belief.

Schedule to be left at dwelling-houses and filled up by the house-holders.

9. (1) Subject to such rules as the Commissioner of Census may make in this behalf any census officer may leave or cause to be left a schedule in the form prescribed at any dwelling-house within the local area of such census officer for the purpose of its being filled up by the occupier of such house or of any specified part thereof.

(2) When any such schedule has been so left the occupier of the house or part to which it relates shall fill it up to the best of his knowledge and belief so far as regards the inmates of such house or part as the case may be at the time of the taking of census and shall sign his name thereto and when so required shall deliver the schedule so filled up and signed to the enumerator or supervisor appointed for the local area within which the house is situated or to such other person as the Commissioner may direct.

Schedules to be delivered to and filled up by keeper of prison, etc.

10. (1) Subject to such rules as the Lieutenant-Governor may make any census officer may if so required by the Commissioner deliver or cause to be delivered to:

(a) every person in charge of a lunatic asylum hospital workhouse prison police station reformatory lock-up or of any public charitable religious or educational institution; or to

(b) every keeper secretary or manager of any hotel boarding-house lodging-house or club;

a schedule in the prescribed form to be filled up in relation to the persons who at the time of the taking of census are under his charge or inmates of his house.

(2) The person to whom the schedule is so delivered shall fill up or cause the same to be filled up to the best of his knowledge and belief so far as regards the inmates of such lunatic asylum hospital workhouse prison police station reformatory lock-up or public charitable religious or educational institution or such hotel boarding-house lodging-house or club at the time aforesaid and shall sign his name thereto and when so required shall deliver the schedule so filled up and signed to the enumerator or supervisor appointed for the local area within which such building is situated or to such other person as the Commissioner may direct.

11. The Commissioner of Census shall obtain by such ways and means as shall appear to him best adapted for the purpose the information required by this Ordinance or by the rules made by the Lieutenant-Governor with respect to

Enumeration of military forces travellers etc.

(a) any body of men belonging to His Majesty's military forces;

(b) all persons who during the time appointed for taking any census were travelling or for any other reason were not abiding in any house of which account is to be taken by the census officers as aforesaid;

and shall include such information in the abstract to be made by him as hereinafter provided.

12. It shall be the duty of every supervisor to deliver or cause to be delivered to any superintendent or person in charge of any mine or estate on which labourers are employed schedules in the prescribed form to be filled up by such superintendent or person in charge with the particulars required in such schedules.

Schedules to be delivered to superintendents of estates and managers of mines and filled up by them.

13. Every enumerator shall deliver to the supervisor all schedules and all such returns as may be required by the Commissioner of the Census on or before a day to be appointed for the purpose by the Commissioner and it shall be the duty of such supervisor to verify them and to transmit them forthwith to the Commissioner.

Enumerator to deliver schedules and returns to supervisor.

14. The Commissioner of the Census shall upon the receipt of the schedule and returns cause an abstract to be made of the same and forward the said abstract to the Lieutenant-Governor within such time as may be appointed by the Lieutenant-Governor and the same shall be printed and published for general information.

Abstract to be made and forwarded to the Lieutenant-Governor and published.

15. Any census officer who

(a) without sufficient cause refuses or neglects to act as such or to use reasonable diligence and care in performing any duty imposed upon him;

(b) wilfully puts an offensive or improper question or knowingly makes any false return;

(c) asks receives or takes from any person other than an authorized officer of the Government any payment or reward;

(d) divulges any information obtained during the performance of his duty as an officer of the census;

shall be guilty of an offence and be liable to a penalty not exceeding one hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding one month or to both such fine and such imprisonment.

Penalties for census officers.

16. Any person who

(a) refuses to answer to the best of his knowledge and belief any question asked of him by an enumerator which he is legally bound so to answer or wilfully makes a false answer thereto;

Penalties.

(b) makes signs delivers or causes to be made signed or delivered any wilfully false or incorrect schedule statement or return;

(c) refuses to allow the enumerator such reasonable access to any land house enclosure or other place as he is required by this Ordinance to allow;

(d) removes obliterates alters or injures before the expiry of four weeks from the time of the taking of census letters marks or numbers which have been painted marked or affixed for the purposes of the census;

(e) refuses or neglects to comply with any provision of this Ordinance or of any rule made thereunder;

shall be guilty of an offence and shall be liable to a penalty not exceeding ten pounds or to imprisonment with or without hard labour for a *term** not exceeding one month.

Records of
census not
admissible
evidence.

17. No entry in any book register or record made by a census officer or by any other person in the discharge of his duty under this Ordinance shall be admissible as evidence in any civil or in any criminal proceeding save and except a prosecution instituted under this Ordinance in respect of such entry against the person who made signed or delivered the same or caused the same to be made signed or delivered anything in any Ordinance contained to the contrary notwithstanding.

18. This Ordinance may be cited as The Census Ordinance 1904.

* As in *Gazette*.

No. 10 of 1904.]

[Promulgated 12th February, 1904.

ORDINANCE

TO AMEND THE NATURALIZATION OF ALIENS ORDINANCE 1902.

Assented to 10th February, 1904.

WHEREAS it is desirable to amend in certain respects the Naturalization of Aliens Ordinance 1902;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. Sub-section (1) of section *one* of the Naturalization of Aliens Ordinance 1902 shall be and is hereby repealed and there shall be substituted therefor the following provisions:—

For text, see Ordinance No. 46, 1902, section one (1).

Repeal of sub-section (1) of section *one* of Naturalization of Aliens Ordinance 1902 and substitution of new sub-section.

2. Notwithstanding anything in the Naturalization of Aliens Ordinance 1902 contained any person who shall have been granted a certificate of naturalization in the United Kingdom under section *seven* of the Naturalization Act 1870 of the Imperial Parliament or who shall have been granted a certificate of re-admission to British nationality under section *eight* of the said Act and shall not subsequently have divested himself of his status as a British subject shall be entitled in this Colony to all the rights powers and privileges and be subject to all the obligations to which he would be entitled and subject if he had been granted a certificate of naturalization under the provisions of the Naturalization of Aliens Ordinance 1902 or of this Ordinance.

Recognition in this Colony of certificates of naturalization or certificates of re-admission to British nationality under Naturalization Act 1870 (Imperial).

3. The form prescribed in the First Schedule to the Naturalization of Aliens Ordinance 1902 shall be and is hereby repealed and there shall be substituted therefor the form set forth in the Schedule to this Ordinance annexed.

Repeal of form in First Schedule of Naturalization of Aliens Ordinance 1902 and substitution of other form.

4. This Ordinance may be cited for all purposes as the Naturalization of Aliens (Amendment) Ordinance 1904 and shall be read as one with the Naturalization of Aliens Ordinance 1902.

Title.

SCHEDULE.

FORM OF APPLICATION FOR CERTIFICATE OF NATURALIZATION.

To the Colonial Secretary of the Transvaal.

I, A.B., do hereby apply for a Certificate of Naturalization in the Transvaal and I declare that the following statements are true and correct in every particular :—

1. Name of applicant in full.....
2. Married or single.....
3. Names and ages of children (if any).....
4. Present nationality and whether acquired by birth or naturalization.....
5. If applicant has resided in British dominion other than the Transvaal, state place or places and period or periods of such residence.....
6. Names and nationality of parents.....
7. Birthplace (state fully name of place and country).....
8. Age next birthday.....
9. Occupation.....
10. Place of residence in Transvaal.....
11. Period or periods during which and place or places in which applicant has resided in Transvaal, giving dates and addresses.....
12. Length of time during which applicant has been in service of Crown.....
13. Does the applicant if naturalized intend to reside in Transvaal.....

Declared at.....this.....day of.....19....
Signature of Applicant.

Before me.....
.....R.M. or J.P.

No. 12 of 1904.] [Promulgated 12th February, 1904.]

ORDINANCE

TO AMEND THE MAGISTRATES COURT PROCLAMATION 1902.

Assented to 10th February, 1904.

WHEREAS it is expedient to amend the Magistrates Court Proclamation of 1902 in certain respects;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. Section *eight* of the Magistrates Court Proclamation 1902 shall be and is hereby amended by the addition after the words "Law No. 3 of 1871" in the said section of the words "and shall have and exercise all the powers duties and jurisdiction conferred and imposed upon Landdrosts or Special Landdrosts by Law No. 13 of 1895 and upon Resident Magistrates by the Administration of Estates Proclamation 1902".

Amendment of section eight of Proclamation Transvaal No. 21 of 1902

2. Section *twelve* of the said Proclamation shall be and is hereby amended as follows:—

Amendment of section twelve of Proclamation Transvaal No. 21 of 1902

(1) by the addition at the end of Clause (1) of sub-section (b) thereof of the words "and in all cases commonly called 'illiquid' for the recovery of the price of any merchandise goods or other movable property when the amount claimed does not exceed the sum of two hundred and fifty pounds sterling";

(2) by the addition in the proviso of the said section after the word "document" of the words "or in respect of the price of any merchandise goods or other movable property".

3. Section *thirteen* of the said Proclamation is hereby repealed and the following substituted in lieu thereof:

Arrests and interdicts.

For text see Transvaal Proclamation No. 21, 1902, section thirteen.

4. Section *thirty-nine* of the said Proclamation shall be and is hereby amended by the substitution for the words "three months" in the said section of the words "six weeks".

Amendment of section thirty-nine of Proclamation Transvaal No. 21 of 1902.

5. Notwithstanding anything contained in the Magistrates Court Proclamation 1902 or any other law the Supreme Court when any criminal matter shall come before it or a judge thereof upon appeal or in review from a court of resident magistrate or other inferior court may confirm set aside or reduce any conviction or sentence as justice may require and may correct the proceedings of any such court and when it shall appear necessary or proper may remit such proceedings to such court with such instructions relative to any further proceedings to be had or taken as the Supreme Court may think fit to give.

Power to Supreme Court to confirm set aside or reduce sentences of inferior courts on review or appeal and correct proceedings and remit to magistrate with instructions.

Power of magistrates to issue garnishee orders.

6. (1) The court of a resident magistrate of any district on the *ex parte* application of any person who has obtained any judgment for the payment of any money in any court of a resident magistrate upon such evidence as the magistrate may require that such judgment is still unsatisfied and of the amount still payable thereunder and that any other person living within the jurisdiction of the court of such magistrate is indebted to the person against whom such judgment has been obtained (hereinafter called the debtor) may order such other person (hereinafter called the garnishee) to pay to the messenger of the court so much of the debt due from him to the debtor as may be sufficient to satisfy the said judgment together with the costs of the garnishee proceedings or failing such payment to appear before the court on a day to be named in the said order and show cause why he should not pay such debt.

(2) Such order shall be served on the garnishee by the messenger of the court in the same manner as a summons is directed to be served by any law or rule relating to the service of summons in civil proceedings in courts of resident magistrates and the service of such order shall operate as an attachment of the said debt in the hands of the garnishee.

(3) If the garnishee does not dispute that the debt is due from him to the debtor nor allege that he has a set off against the debtor or that the debt sought to be attached belongs to or is subject to a lien by some other person or if he shall not appear to show cause as is mentioned in sub-section (1) of this section the court may if satisfied by the return of the messenger of the court endorsed upon the order that the same has been duly served further order execution to issue against the garnishee for so much of the debt as may be sufficient to satisfy the said judgment together with the costs of the garnishee proceedings and the process for the execution of such order shall be as nearly as possible in accordance with the laws in force in courts of resident magistrates relative to the process for the execution of judgments of such courts.

(4) If the garnishee disputes his liability to pay the said debt or alleges that the debt sought to be attached is subject to a set-off or belongs to or is subject to a lien by some other person the court instead of making a further order as in the last preceding sub-section is provided shall subject to the limitations as to jurisdiction imposed on courts of resident magistrates in civil cases proceed to hear and determine the question of such liability or of the rights of such other person and may order such other person to appear and state the nature and particulars of his claim to or upon the said debt; provided always if such other person reside or be for the time being within any other district of the Colony such order shall upon endorsement by the resident magistrate of the district in which such other person resides or is for the time being be capable of service within such last named district; and every resident magistrate is

hereby authorized and required on production to him of any such order to endorse the same.

(5) After hearing the garnishee or such other person aforesaid and their witnesses (if any) or in case of the non-appearance after order of such other person the court may order execution to issue against the garnishee in manner provided by sub-section (3) of this section; and may declare the claim of such other person to be barred or may make such other order as to the court shall seem meet upon such terms in all cases with respect to the set-off lien or charge (if any) of such other person and upon such terms with respect to costs as to the court shall think just and reasonable.

(6) Payment made by or execution levied upon the garnishee under the provisions of this section shall be a valid discharge of the debt due from him to the debtor to the amount paid or levied.

(7) The clerk of the court shall keep a book to be called the "Debt Attachment Book" wherein he shall note the names of the parties to garnishee proceedings the dates of any process thereunder and the dates and statements of the amounts recovered; copies of any entries in such book may be obtained by any person on payment of a fee of one shilling.

(8) The costs of any proceedings under the provisions of this section shall be in the discretion of the court.

(9) The resident magistrate shall transmit certified copies of any orders made and a certificate of the amounts paid or levied under this section to the resident magistrate of the court in which the judgment was obtained against the debtor.

**(10) Nothing in this section contained shall authorize a court of resident magistrate to make any order thereunder for payment by a garnishee of a debt due from him to a debtor in respect of salary or wages.*

7. If any person being required by the messenger of the court to point out property to satisfy any writ shall

- (a) falsely declare to the messenger that he possesses no property or not sufficient property to satisfy such writ; or
- (b) although owning such property shall fail or refuse to point out the same,

he shall on conviction be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for any period not exceeding six months.

8. This Ordinance may be cited as the Magistrates Court Proclamation Amendment Ordinance 1904 and shall be read as one with the Magistrates Court Proclamation 1902 and any law amending the same.

False returns
on *nulla bona*.

Title.

* Sub-sec. (10) added by Act No. 30 of 1908, sec. 6.

No. 14 of 1904.]

[Promulgated 19th February, 1904.

*ORDINANCE

TO REGULATE THE OWNERSHIP OF TOWN LANDS.

Assented to 11th February, 1904.

WHEREAS it is expedient to make provision as to the ownership of town lands;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Repeal of laws.

1. Volksraad Resolution article 140 dated 13th October 1868 Law No. 17 of 1898 section *forty-five* and sections *one* and *two* of Regulations for Towns in the South African Republic published in the *Staatskoerant* of 25th October 1899 page 1673 and so much of any other law as may be repugnant to or inconsistent with the provisions of this Ordinance shall in so far as they apply to town lands within the limits of any Local Authority be and are hereby repealed.

Interpretation of terms.

2. In this Ordinance unless there is something repugnant in the subject or context;

“Town lands” means the lands referred to in the laws mentioned in the preceding section as “public town lands of towns” or as “common village or town land” and vested by the said laws in the State;

“Local Authority” means the Council of any Municipality or Urban District Board as the case may be.

Lieutenant-Governor may reserve portions of town lands for public purposes.

3. The Lieutenant-Governor may in consultation with the Local Authority reserve out of the town lands of any town such portions thereof as may be required for public purposes; provided that if any Local Authority shall be dissatisfied with the portion or portions so reserved it may appeal by petition to the Legislative Council whose decision on such petition shall be final; and provided further that when any such portion shall for a period of ten years remain unused for public purposes the same shall vest in and become the property of the Local Authority in the same manner as the lands referred to in the next succeeding section.

Remainder of town lands to be transferred to Local Authority. Provisions in respect of public diggings proclaimed on town lands.

4. (1) All the town lands except such as shall have been reserved under the provisions of the last preceding section shall be granted or transferred to and vested in the Local Authority of such town in full ownership without any reservation in the grant thereof of minerals and precious stones in favour of the Crown; provided always that on the proclamation of any public digging under Law No. 15 of 1898 or any amendment thereof or of a mine under the Precious Stones Ordinance 1903 on the land so granted the Local Authority shall be entitled to

* See Ord. No. 2 of 1905.

all the rights of an owner of private land on which a public digging or mine is proclaimed under the said Law or Ordinance; and provided further that the revenues and profits received by such Local Authority arising out of such rights as aforesaid shall be applied to the purposes mentioned in section *six* of this Ordinance; provided that where any Local Authority is indebted to the Government such grant or transfer shall not take place until such Local Authority shall give satisfactory security for the repayment of the debt.

(2) In case any portion of any town lands was proclaimed a public digging prior to the taking effect of this Ordinance the Local Authority shall be entitled to one-half the licence moneys in respect of all claims and stands on such digging paid to the Colonial Treasurer from and after the taking effect of this Ordinance.

The licence moneys payable on any claims pegged out on any such public digging after the land on which such claims are situated is granted to the Local Authority shall be at the same rate as licence moneys on claims situated on proclaimed private land.

5. The provisions of section *forty-one* sub-section (8) of the Municipal Corporations Ordinance 1903 shall apply to all lands granted or transferred under the last preceding section.

Land not to be alienated without consent of Lieutenant-Governor.

6. All moneys derived from the alienation of lands granted or transferred under this Ordinance shall only be applied to purposes sanctioned by the Lieutenant-Governor.

Application of moneys derived from sale of town lands.

7. Where erven shall after such grant or transfer be laid out whether by the Local Authority or any person deriving title from such authority upon any portion of the land transferred to any Local Authority under the provisions of section *four* of this Ordinance a number of erven not exceeding one-tenth of the number so laid out shall be reserved by the Local Authority or person as aforesaid for public purposes in such position or positions as may be indicated by Government.

Government to be entitled to one-tenth of erven subsequently laid out.

8. *Repealed by Ordinance No. 2, 1905, section five.*

Exclusion of town lands allotted to settlers before taking effect of Ordinance.

9. This Ordinance may be cited as the Town Lands Ordinance 1904.

Title.

No. 15 of 1904.]

[Promulgated 19th February, 1904.]

ORDINANCE

TO PROVIDE FOR THE BRANDING OF GREAT STOCK AND FOR THE
REGISTRATION OF SUCH BRANDS.

Assented to 12th February, 1904.

WHEREAS it is expedient to regulate the branding of great stock and to provide for the due registration of brands;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council as follows:—

Interpreta-
tion of terms.

1. In this Ordinance unless there is something repugnant in the subject or context:

“brand” shall mean a brand duly registered under this Ordinance and made upon any portion of the hide of any great stock in manner prescribed by this Ordinance;

“branding iron” shall mean the instrument prescribed for imprinting a brand or mark on great stock by this Ordinance or the regulations made under it;

“branding instrument” shall mean any other instrument or tool by which any mark or symbol can be impressed imprinted or cut on any portion of any horse or cattle;

“Brand Directory” shall mean an authorized list of brands compiled by the Registrar of Brands and published by the Government Printer;

“native commissioner” shall include sub-commissioner;

“distinctive mark” shall mean a lawful mark (other than a registered brand) which a native is empowered by this Ordinance to mark upon the dewlap or head of any stock already bearing the brand of the location native family or stad in which such native resides to denote his ownership thereof;

“great stock” shall mean horses and cattle with their offspring;

“horse” shall mean any horse mare gelding colt filly ass or mule;

“cattle” shall mean any bull cow steer heifer or calf;

“officer of police” shall mean any commissioned officer of the South African Constabulary or any member of the Town Police above the rank of sergeant;

“police officer” shall mean any member of the South African Constabulary or Town Police;

“inspector” shall mean any person empowered to act as an inspector of brands under this Ordinance;

“imprisonment” shall include imprisonment with or without hard labour;

- “register” shall mean the register book kept in pursuance of this Ordinance containing a list of brands for great stock registered hereunder;
- “registrar” shall mean the registrar of brands;
- “regulations” shall mean the regulations framed by the Lieutenant-Governor under this Ordinance;
- “residence” shall mean the residence house homestead or dwelling of the owner of any brand or great stock;
- “holding” shall mean any farm or other place where great stock is kept.

ADMINISTRATION.

2. This Ordinance shall come into force upon the 1st day of July 1904.

Date of taking effect of Ordinance.
Registrar and Inspectors of Brands.

3. It shall be lawful for the Lieutenant-Governor to appoint an officer in the Department of Agriculture who shall be called the Registrar of Brands and whose office shall be in Pretoria and such persons as he may think fit from time to time to be inspectors of brands who shall be under the authority of the resident magistrates for the districts for which they are appointed; every resident magistrate assistant magistrate native commissioner and officer of police shall be *ex officio* an inspector of brands.

Register book.

4. The resident magistrate shall keep a register in the form in Schedule “A” hereto of all brands allotted within his district under the provisions of this Ordinance.

5. On and after the 1st day of July 1904 any person other than a native resident in a native location requiring a brand shall deliver or transmit to the resident magistrate an application in the form in Schedule “B” hereto accompanied by the fees prescribed in Schedule “F” for the registration of a brand; if no special combination is applied for the resident magistrate if satisfied that such application is in conformity with the provisions of this Ordinance shall allot to such applicant in the order in which his application is received the first unallotted brand standing in the register for the magisterial district in which the holding is situated on which the brand is to be used and shall register the said brand to such applicant accordingly in the form in Schedule “A” hereto annexed; provided always that it shall be lawful for the resident magistrate at the request of the owner as aforesaid to allot another combination standing vacant in the register for the same magisterial district.

Application for brand.

6. Upon the registration of any brand as aforesaid the resident magistrate shall deliver or transmit to the applicant to whom such brand is allotted a certificate of the registration thereof in the form in Schedule “C” hereof.

Certificate.

7. Save as hereinafter provided every registered brand shall consist of two letters and one numeral of plain and uniform pattern in an even and regular line and the first of the letters shall indicate the magisterial district or sub-district in which the holding is situate on which the brand is to be used.

Form of registered brand.

The boundaries of the sub-districts shall be defined by notice in the *Gazette*.

Number of brands to be allotted to an applicant.

8. One brand and no more shall be allotted to any person in any one magisterial district or sub-district.

The size of the characters branded on great stock shall be not less than one and a quarter inches in height.

RULES FOR BRANDING.

How brands are to be imprinted.

9. All brands shall be imprinted on great stock as follows :

(1) in the case of "horses"—

the first brand shall be imprinted either on the near side of the neck or near rump of such "horse" and any second or subsequent brand on that part of such animal herein mentioned at the distance stated in the next succeeding sub-section and next in order as defined in sub-section (2) paragraph (b) (i) (ii) (iii) (iv) (v) of this section;

(2) in the case of "cattle"—

(a) the first brand shall be imprinted on the near rump (or thigh) of the animal and every second or subsequent brand shall (where there is space sufficient for the purpose) be imprinted on the same part of such animal and at a distance of not less than one and a half inches from and directly underneath the brand last imprinted according to the table herein set forth;

(b) where there is not sufficient space for the purpose then such second or subsequent brand shall be imprinted on the part of such animal next in order according to the following table;

(i) off rump (or thigh);

(ii) near shoulder (or top of arm);

(iii) off shoulder (or top of arm);

(iv) near ribs.

(v) off ribs.

Publication in *Gazette* of registered brands.

10. The registrar shall at the end of each quarter of every year or as soon thereafter as possible from returns sent to him by the resident magistrates transmit for publication in the *Gazette* a statement in the form in Schedule "A" hereto of all brands registered under this Ordinance up to the last day of such quarter with the names and addresses of their respective owners and shall cause copies of such *Gazettes* to be sent to every resident magistrate poundmaster and inspector of brands in the Colony as soon after publication as possible.

Annual Brand Directory.

11. From such quarterly publications the registrar shall as soon as possible after the thirty-first day of December in each year cause a Brand Directory containing all the brands which stand registered up to date to be compiled and published in the form of the said publications; and he shall cause a copy thereof to be forwarded as soon as possible after publication to every inspector resident magistrate district commandant of the South African Constabulary deputy commissioner of the Town Police poundmaster and postmaster in this Colony.

TRANSFERS.

12. The person wishing to transfer his right to any registered brand and the person intending to become the transferee thereof shall sign a document in the form in Schedule "D" and shall transmit it to the resident magistrate with a fee of ten shillings who may on receipt thereof cancel the registration of the said brand standing in the name of the transferor and register such brand in the name of the transferee and such transferee shall thereafter be deemed to be the person having the exclusive right to use such brand as aforesaid; or the resident magistrate may return the fees and decline to register the transfer; provided that on the sale of a holding if the owner does not sell the whole of the stock bearing his brand to the purchaser then the resident magistrate shall not transfer the brand to the purchaser of such holding.

Transfer of registered brands.

The resident magistrate shall keep a book in which all transfers surrenders and cancellations of brands shall be recorded and the registrar shall from returns sent to him by the resident magistrates notify the same at the end of every quarter in the *Gazette* immediately following the quarterly statement of brands registered.

13. The owner of any brand may surrender the same and the registrar shall on receipt of notice thereof cancel the registration.

Surrender of brands.

14. When it appears to the resident magistrate upon the report of an inspector or otherwise that a registered brand is not in use he may cause notice to be given to the owner thereof calling upon him to show cause why the same should not be cancelled; and if cause is not shown to the satisfaction of the resident magistrate within six months after such notice he may cancel the brand.

Disused brands.

15. No brand which has been surrendered or cancelled shall be reallotted until a period of five years from such surrender or cancellation has elapsed.

Interval before reallotment.

LOCATION BRANDS, BRANDS FOR HEADMEN, AND DISTINCTIVE MARKS THEREUNDER.

16. The resident magistrate shall allot a brand to every native location established or to be established within his district and shall register the same; and the said brand and no other shall be imprinted on great stock the property of natives who are resident in such location and for so long a time as they remain resident there.

Brands for locations.

The first character of all such brands shall be a dagger and of the remaining characters the one shall be a numeral and the other shall be the initial letter of the name of the location such dagger numeral and letter shall be not less than one and a quarter inches in height.

17. The resident magistrate may on the recommendation of the native commissioner for the district allot a brand to the headman of any native family or stad to be used for the great stock the property of the members of such family or stad.

For headmen.

Distinctive marks for natives in locations.

18. All distinctive marks shall be of such a shape and character as the resident magistrate may direct; and such distinctive marks and no others shall be used for the purpose for which they are allotted.

Notification by natives of intention to use distinctive marks.

19. Every native in any location or in any family or stad having a common brand may before using any distinctive mark notify his intention of doing so to the native commissioner for the district in which such mark is intended to be used. And such commissioner shall register the said mark in a book to be kept by him for the purpose; but he may in the case of two or more natives notifying the same distinctive marks allot such modification thereof to one or more of such owners as shall render all such marks dissimilar; provided that

(1) no distinctive mark shall be allotted to any person who is not resident in a native location or in such native family or stad;

(2) the right to use such distinguishing mark shall lapse with the surrender transfer or cancellation thereof or the removal of the owner of the mark from the location native family or stad.

MISCELLANEOUS.

Lettering of brands.

20. All brands allotted to natives resident in native locations shall be in italic or running letters. All other brands shall be in roman letters.

Government stock.

21. Nothing in this Ordinance contained shall apply to any great stock the property of the Imperial or Local Military Authorities or the South African Constabulary.

Butchers' and dealers' books.

22. Every butcher poundmaster and auctioneer shall keep a separate book open at all times to inspection by any inspector of brands or police officer duly authorized in that behalf and shall therein truly enter the brands cut or imprinted on every animal so slaughtered dealt in impounded or sold by him in their proper order according to the provisions of this Ordinance.

Any such person who shall slaughter or dispose of any animal on whose hide any brand cut or imprinted under the provisions of this Ordinance shall appear to have been altered blotched or defaced without first reporting the matter in writing to the nearest police officer or inspector of brands and for forty-eight hours thereafter shall on conviction be liable to a fine not exceeding five pounds per head for every animal so unlawfully slaughtered or disposed of or to imprisonment for any term not exceeding three months.

Inspectors may enter any building or place where stock is kept.

23. Every inspector or police officer duly authorized in that behalf is hereby empowered to enter on or into any part of any holding or place throughout this Colony where stock are kept and to inspect any stock hides branding iron or brand and compare the same with the brand certificate and diagram which shall be produced to him; and every such inspector or constable* as aforesaid may seize and impound any stock and any

* As in *Gazette*; in Ord. 1904 the words "police officer" are given.

hides in respect of which the owner has committed any breach of this Ordinance and any branding instrument and any certificate in his possession and may where necessary employ any person or persons to assist him in carrying out the provisions of this section.

Any person hindering or impeding any inspector or police officer as aforesaid in the execution of his duty or attempting so to do or refusing to produce any branding iron instrument or certificate or to permit such inspector or police officer to inspect any stock shall for every such offence on conviction be liable to a fine not exceeding seventy-five pounds or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

24. Every resident magistrate poundmaster postmaster and magistrate's clerk shall keep a copy of the latest issue of the Brands Directory and (save and except the postmaster) a copy of each *Gazette* containing the quarterly statements of registered brands not included in such directory and shall on receipt of a fee of one shilling permit search therein at all reasonable hours and every such person failing to comply with the requirements of this section shall on conviction be liable to a fine not exceeding five pounds and in default of payment to imprisonment for a period not exceeding fourteen days.

Magistrates and other officials to keep copies of Brands Directory and *Gazette* containing statements of registered brands.

25. When any stock are in a pound the poundmaster shall forthwith send notice thereof to the owner of the brand which shall appear last in order according to the table in section *nine* of this Ordinance and also in the case of stock bearing the brand of a location or native stad to the native commissioner of such district stating in such notice the distinctive marks if any appearing on such stock; but when the poundmaster has any reason to suppose that such stock belongs to a person other than the owner of the said brand he shall in every such case send notice of the impounding both to the owner of such brand and the supposed proprietor of such stock. Every poundmaster who shall neglect or delay to send any such notice shall on conviction be liable to a fine not exceeding twenty pounds and in default of payment to imprisonment for any term not exceeding two months.

The poundmaster to notify owners.

26. The resident magistrate shall allot a brand to every public pound already or hereafter to be established in his district and shall register the same.

Pound brands.

The first character of every such brand shall be a diamond and the second the dominant letter of the magisterial district and the third a numeral; the whole to be in one line; and the poundmaster shall on sale of any great stock impounded therein brand the same with such brand on the portions and in the order prescribed in this Ordinance to show that the said brand is the last brand at that time imprinted on such stock; and any poundmaster who shall fail to comply with the provisions of this section shall on conviction be liable to a fine not exceeding seventy-five pounds and in default of payment to imprisonment for any term not exceeding six months.

Notice—how given.

27. When under the provisions of this Ordinance it may be necessary to give or send any notice the same may be given in any of the following ways—

- (1) personally upon the person to whom the notice is addressed;
- (2) by registered letter sent through the post and directed to the last known place of abode or business in this Colony of such person and by inserting in addition the notice once in the *Gazette* and once in some newspaper circulating in the district in which the holding which is the subject of such notice is situated and further by forwarding a copy of such notice to the resident magistrate for the magisterial district or in case of cattle the property of a native to the native commissioner or resident magistrate for such district where there is no native commissioner in which the said holding is situate who shall cause the same to be exhibited outside his office or court.

Regulations.

*28. It shall be lawful for the Lieutenant-Governor from time to time to make alter amend or repeal regulations prescribing—

- (1) the shape and size of letters and numerals to be used for registered brands and the arrangement of them;
- (2) the shape and size of brands for pounds;
- (3) the shape and pattern of branding irons and other marking instruments;
- (4) the shape and character of distinctive marks and the conditions under which the same may be granted surrendered and cancelled and used and registered;
- (5) the fees and prices payable and forms to be used and for any object or purpose that may be deemed necessary for the efficient administration of this Ordinance.

IMPOUNDING.

Stock which may be impounded.

29. Any great stock bearing a brand which shall have been wilfully altered blotched defaced or rendered illegible and all stock upon which the dewlap or head shall have been cut or cropped contrary to this Ordinance shall be deemed and held to be unbranded animals and may be impounded by any inspector or police officer.

OFFENCES.

Sale of branding instruments.

30. From and after the passing of this Ordinance any person who shall make or offer for sale any branding instrument or tool adapted for the purpose of imprinting marks on stock except in accordance with this Ordinance and the regulations thereunder and similar to or resembling in pattern and size those prescribed under this Ordinance; and any person who shall use or attempt to use or knowingly permit to be used or have in his possession any branding iron or instrument

* For regulations under this section see Govt. Notices Nos. 1133 of 1906 (*Gazette*, 22/11/06); 1346 of 1906 (*Gazette*, 28/12/06). These regulations were put in force from 1st October, 1908, by Govt. Notice No. 990 of 1908 (*Gazette*, 2/10/08).

similar to or resembling in pattern and size those prescribed under this Ordinance other than the branding iron which he is entitled to use as herein provided shall on conviction be liable for every such offence to a fine not exceeding seventy-five pounds and in default of payment to imprisonment for a period not exceeding six months.

31. If any person shall wilfully brand or imprint with his distinctive mark any stock of which he is not the owner or shall wilfully cause direct or permit any stock of which he is not the owner to be branded with his brand such person shall on conviction for every such offence be liable to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

Fraudulently branding the stock of other persons.

32. From and after the passing of this Ordinance any person who shall mark or direct aid or assist in marking or permanently imprinting on any stock or any portion thereof any signs symbols or characters other than those made and registered in accordance with the provisions of this Ordinance shall on conviction for every such offence be liable to a fine not exceeding seventy-five pounds and in default of payment to imprisonment for any term not exceeding six months; provided that nothing in this section contained shall apply to any brand used by any person at the passing of this Ordinance.

Using unregistered brand and irregularly using registered brand.

33. Any person who shall wilfully blotch deface or otherwise render illegible or alter any brand or distinctive mark upon great stock or wilfully direct cause or permit any such brand or mark to be blotched defaced or otherwise rendered illegible or altered or be a party thereto or shall wilfully mark or cause direct or permit any great stock to be marked on the dewlap or head by cropping or cutting off the whole or more than one-third thereof shall on conviction before any resident magistrate for every such offence be liable to a fine not exceeding seventy-five pounds or to imprisonment for a period not exceeding six months.

Defacing brands.

34. Any person who

(a) shall knowingly and unlawfully insert or permit to be inserted any false entry or diagram of any matter relating to any brand in any register certificate Brands Directory quarterly statement or in any extract from any of them; or
(b) shall with intent to defraud forge alter offer utter dispose of or put off knowing the same to be forged or altered any such document or extract as aforesaid or which purports to be such; or

(c) shall with intent to defraud wilfully and unlawfully destroy deface or alter or cause to be destroyed defaced or altered any such document or extract therefrom; or

(d) shall knowingly and wilfully with intent to defraud use the brand or distinctive mark of any proprietor without his authority;

Forged certificates.

shall on conviction for every such offence be liable to imprisonment with or without hard labour for any term not exceeding three years.

On trial for theft of stock brand to be prima facie evidence of ownership.

35. On the trial of any person for the theft of any hide or stock or for receiving any such hide or stock or any part thereof knowing the same to have been stolen it shall be competent for the prosecution to give evidence that the brand upon the hide or animal alleged to have been stolen is the brand of the person alleged to have been the owner of such hide or animal or of some person through or from whom such owner derived his right to such animal and a certificate purporting to be under the hand of the registrar or a copy of the *Gazette* containing the publication of such owner's brand shall constitute prima facie proof of the facts therein alleged.

Mutilation so as to remove distinctive marks.

36. In the case of the prosecution of any person for theft of any great stock or hide thereof where the hide is proved to have been mutilated in such a way that any brand or distinctive mark is removed or rendered illegible the onus of proving that he was the proprietor of such animal or hide shall rest on the accused person.

Other offences.

37. Any person wilfully failing to comply with or offending against the provisions of this Ordinance in any case in which no penalty is imposed hereby; and any person failing to comply with or offending against any of the provisions of any regulation made under this Ordinance shall on conviction be liable to a fine not exceeding twenty pounds and in default of payment to imprisonment for a period not exceeding two months.

Title.

38. This Ordinance may be cited for all purposes as the Great Stock Brands Ordinance 1904.

SCHEDULE A.

DISTRICT BRAND REGISTER.

(The Great Stock Brands Ordinance 1904.)

Name of Owner in full.	Address.	District for which Brand is required.	PARTICULARS OF BRAND.		
			Brand Allotted.	No. of Certificate.	Date of Registration.

SCHEDULE B.

APPLICATION FOR BRAND.

(The Great Stock Brands Ordinance, 1904.)

To the Resident Magistrate.

Herewith I/we enclose the prescribed fees of....., and request that you will allot and register a brand for the holding or place mentioned in the Schedule below.

Name of Applicant(s) in full.	Address.	District for which Brand is required.

Fee.....shillings.

Signed.....
Applicant(s)

I/We hereby request that the second letter of my/our brand may be the letter.....

Signed.....

SCHEDULE C.

(The Great Stock Brands Ordinance, 1904.)

No.....

.....day of.....

I hereby certify that the brand shown in the diagram at foot hereof was duly registered on the date and as the brand of the person(s) therein set forth in the Schedule hereto.

Owner(s) full name(s).	Address.	District for which Brand is required.	Date of Registration.

Fee paid.....
Diagram of Brand.

Signed.....
Resident Magistrate.

SCHEDULE D.

MEMORANDUM OF TRANSFER OF BRANDS.

(The Great Stock Brands Ordinance.)

To the Resident Magistrate.

SIR,—I,....., being the registered owner of the brand set forth in the Schedule hereto and desiring to transfer the same to (name in full of transferee) of (name of holding or place where brand will be used and postal address thereof) hereby request you will record the same in your register accordingly, and I herewith enclose the fee therefor (.....shillings).

A.B. (Owner).

Address.....
Witness.....

C.D. (Transferee).

Address.....
Witness.....

Brand.	Name and Address of previous Owner of Brand.	District where Brand is registered.	No. of Certificate.	Date of Registration.

SCHEDULE E.

CERTIFICATE OF TRANSFER.

(Great Stock Brands Ordinance, 1904.)

No.....

Date.....

This is to certify that the brand shown in the specimen at the foot hereof was this day transferred from..... of..... to..... of.....

Signed.....

Resident Magistrate.

Fee paid.....

Diagram of Brand.	Transferee's Name and Address.	District where Brand is to be used.	No. of Certificate.	Date of Registration.

SCHEDULE F.

FEES.

(Great Stock Brands Ordinance, 1904.)

Payable to the Resident Magistrate:—

- | | |
|-----------------------------------------------------|------|
| 1. For every separate registration of a brand | 5s. |
| 2. For every separate transfer of a brand | 10s. |

SCHEDULE G.

(Great Stock Brands Ordinance, 1904.)

BRANDS FOR PERSONS NOT RESIDENT IN LOCATIONS—
ROMAN LETTERS.

Dominant Letter.	District denoted.	Brand Series.
A.	Pretoria	AA2 and variations. A2A and variations.
B.	Bloemhof (sub-district)	BA2 and variations. B2A and variations.
C.	Carolina (sub-district)	CA2 and variations. C2A and variations.
E.	Ermelo (not including sub-district Carolina)	EA2 and variations. E2A and variations.
F.	Piet Retief (sub-district)	FA2 and variations. F2A and variations.
G.	Middelburg	GA2 and variations. G2A and variations.
H.	Heidelberg	HA2 and variations. H2A and variations.
*J.	Johannesburg (Municipality of)	JA2 and variations. J2A and variations.
K.	Krugersdorp (sub-district)	KA2 and variations. K2A and variations.
L.	Lichtenburg	LA2 and variations. L2A and variations.
M.	Marico	MA2 and variations. M2A and variations.
P.	Potchefstroom	PA2 and variations. P2A and variations.
R.	Rustenburg	RA2 and variations. R2A and variations.
S.	Standerton (not including sub-district Bethal)	SA2 and variations. S2A and variations.
T.	Bethal (sub-district)	TA2 and variations. T2A and variations.
U.	Wakkerstroom	UA2 and variations. U2A and variations.
V.	Wolmaransstad (not including sub-district Bloemhof)	VA2 and variations. V2A and variations.
W.	Waterberg	WA2 and variations. W2A and variations.
*X.	Witwatersrand District, not including the municipal area of Johannesburg and the sub-district of Krugersdorp	XA2 and variations. X2A and variations.
Y.	Lydenburg	YA2 and variations. Y2A and variations.
Z.	Zoutpansberg	ZA2 and variations. Z2A and variations.

NOTE.—Reserved for distribution (if required) all brands with the numerals as dominant, thus—2AA, etc., to 9ZZ.

Permanently reserved: The letters O and I (to be used exclusively as numerals). The letters N and Q are unallotted. The letter D reserved for Government Departments.

* By Govt. Notice No. 97 of 1910 (*Gazette*, 28/1/10) the letter J was made the dominant letter for the whole of the Johannesburg District, and the letter X the dominant letter for the districts of Boksburg and Germiston only.

No. 16 of 1904.]

[Promulgated 19th February, 1904.]

ORDINANCE

TO PREVENT THE INTRODUCTION AND SPREAD OF INSECT PESTS
AND DISEASES OF PLANTS.

Assented to 12th February, 1904.

WHEREAS it is expedient to make provision for preventing the spread in this Colony of insect pests and diseases of plants; to regulate the importation of plants into this Colony and to provide for the licensing and inspection of nurseries;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:

*1. It shall be lawful for the Lieutenant-Governor from time to time to make alter or repeal regulations for all or any of the following purposes and to provide penalties for the breach thereof;

(a) for regulating the importation into this Colony of any plant or portion thereof affected or liable to be affected with insect pest or plant disease;

(b) for preventing the introduction or spread of any insect pest or plant disease to which plants or portions thereof are liable;

(c) for the licensing and inspection of nurseries or other places in which plants are reared for purposes of sale or other method of disposal;

(d) for the charging of fees in respect of any licences issued or inspections or treatment carried out by regulations made under this Ordinance;

provided that no penalty shall be imposed by any such regulation as aforesaid exceeding a fine of fifty pounds or in default of payment of the same imprisonment with or without hard labour for a period not exceeding three months.

2. This Ordinance may be cited as The Diseases of Plants Prevention Ordinance 1904.

Power to make regulations for prevention of disease amongst plants and for other purposes.

Title.

* The following regulations were made: Plant Importation Regulations by Govt. Notice No. 372 of 1908 (*Gazette*, 16/4/08), Insect Pest and Plant Disease Regulations by Govt. Notices Nos. 576 of 1909 (*Gazette*, 28/5/09), 646 of 1909 (*Gazette*, 11/6/09), and 284 of 1910 (*Gazette*, 24/3/10).

No. 17 of 1904.]

[Promulgated 19th February, 1904.]

ORDINANCE*

TO REGULATE THE INTRODUCTION INTO THE TRANSVAAL OF
UNSKILLED NON-EUROPEAN LABOURERS.

Assented to 11th February, 1904.

WHEREAS it is desirable to make provision for regulating the introduction from outside Africa south of 12 degrees north of the Equator into the Witwatersrand District of unskilled labourers not being of European descent for the exploitation of minerals within the said area ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows ;

1. In this Ordinance and all rules and regulations made thereunder unless the context otherwise requires the following expressions in inverted commas shall have the meaning placed opposite to them that is to say—

“labourer” means a male person belonging to a non-European race other than one of the races indigenous to Africa south of 12 degrees north of the Equator introduced into this Colony under contract of service ;

“unskilled labour” means such labour as is usually performed in mines in the Witwatersrand District by persons belonging to the aboriginal races or tribes of Africa south of the Equator ;

“importer” means any person introducing labourers into this Colony or any person to whom labourers have been transferred under this Ordinance ;

“country of origin” means in the case of any labourer the country from which such labourer is introduced ;

“contract” means the contract of service entered into by a labourer as provided in this Ordinance ;

“imprisonment” means imprisonment either with or without hard labour ;

“Witwatersrand District” shall mean the area within which the Witwatersrand High Court has jurisdiction.

APPOINTMENT OF OFFICERS : THEIR POWERS AND DUTIES.

2. The Lieutenant-Governor may appoint a superintendent of labourers (hereinafter styled the superintendent) who shall have the general administration of this Ordinance and shall perform such duties and exercise such powers as may be imposed on

Superintendent and inspectors of labourers.

* See Act No. 2 of 1907, sec. 20, containing provisions as to certain Asiatics under contract of service. As to Convention between United Kingdom and China, see Govt. Notices Nos. 771 of 1904 (*Gazette*, 3/6/04), and 1262 of 1904 (*Gazette*, 2/12/04). As to instructions to Transvaal emigration agents in China, see Govt. Notice No. 778 of 1904 (*Gazette*, 10/6/04) ; see also Ord. No. 27 of 1905, Ord. No. 12 of 1906. See, however, Letters Patent, 1906, sec. L, and Act No. 19 of 1907.

him by this Ordinance or by regulations made thereunder and the Lieutenant-Governor may likewise from time to time appoint such inspectors medical officers clerks and other officers as may be necessary for the proper administration of this Ordinance.

General powers of superintendent and inspectors.

3. The superintendent or any inspector may at any time enter upon the premises on which labourers are employed and inspect the condition and general treatment of such labourers and the condition of their housing accommodation and hospital accommodation and may inquire into any complaint which an employer may have against a labourer or which a labourer may have against his employer or any person placed in authority over him by such employer and may require any labourer to be brought before him on any such visit and may either before or after such inquiry as aforesaid make a complaint or lay an information in his own name on behalf of a labourer against the employer or against any other person before the magistrate of the district.

Power to summon witnesses on inquiry; penalties for refusing to be sworn and for giving false evidence.

4. (1) The superintendent or inspector may summon any person as a witness whose evidence he considers necessary for the proper determination of any inquiry held by him; such summons shall be served by the person to whom it is directed in the same manner as a summons issued by a magistrate is required to be served.

(2) Every person on whom such summons has been duly served who without any reasonable excuse refuses or neglects to attend at the time and place mentioned in such summons shall be liable to a penalty not exceeding ten pounds and in default of payment to imprisonment for a period not exceeding one month.

(3) The superintendent or inspector shall require every statement given by any person at an inquiry held by him to be given upon oath and for such purpose he is hereby authorized to administer an oath to every such person.

(4) Every person who refuses to be so sworn when thereto required shall be deemed to have hindered the officer holding the inquiry in the execution of his duty and shall be liable to be punished accordingly.

(5) Every person who after being so sworn wilfully makes a false statement as to anything material to the proper determination of the matter then in question shall be deemed guilty of perjury and shall be liable to be dealt with and punished accordingly.

INTRODUCTION OF LABOURERS.

Labourers may not enter Colony except under contract of service.

5. It shall not be lawful for any labourer to enter or to be introduced into this Colony unless he shall previously have entered into the contract referred to in section *eight* and until such contract has been registered in the office of the superintendent.

Prohibition of introduction of labourers except under this Ordinance.

6. No person shall introduce labourers into this Colony or employ such labourers unless he has obtained a licence to do so from the Lieutenant-Governor under the next succeeding section nor contrary to the terms of such licence; any person contravening this section shall be liable to a penalty of one hundred

pounds for every such labourer introduced or employed by him and shall further be bound to refund to the superintendent any expenses incurred by him in returning such person to his country of origin.

7. (1) The Lieutenant-Governor may subject to the provisions of this Ordinance grant a licence to any person to introduce labourers into this Colony to perform unskilled labour only in the exploitation of minerals within the Witwatersrand District. Licences.

(2) No such licence shall be granted until the Lieutenant-Governor is satisfied ;

(a) that the Government of the Colony or State in which the port is situated through which such labourers may enter South Africa for the purpose of being conveyed to the Transvaal has made adequate provision (1) for the medical examination of such labourers on their landing at such port ; (2) for preventing the forwarding of labourers who after such medical examination are found to be insane or suffering from a contagious or infectious disease ; (3) for the control of labourers while in transit to this Colony or from this Colony back to their country of origin ;

(b) that suitable accommodation for the housing of such labourers on the premises on which they are to be employed will be ready on their arrival in this Colony ;

(c) that proper security in terms of section *twenty-two* has been given by the applicant.

(3) Every such licence shall state the port or ports in South Africa through which such labourers shall be introduced.

(4) No such labourer shall be employed elsewhere in this Colony than in the Witwatersrand District.

8. Every person obtaining a licence under the last preceding section to introduce labourers shall prior to such introduction enter into a contract in writing with such labourers in the form prescribed by regulation which contract shall be signed by the labourers to be bound thereby in the presence of some person possessing the qualifications prescribed by regulation who shall before such labourers sign the contract explain to them the provisions thereof as well as the provisions of this Ordinance mentioned in the schedule referred to in the next succeeding section. A certificate shall be attached to the said contract signed by the aforementioned person certifying that the provisions of this section have been complied with and such certificate shall be conclusive evidence of the facts therein stated. Contracts with labourers—how executed.

Such contract shall be of full force and effect in this Colony as soon as it is registered in the office of the superintendent.

9. The introduction of labourers shall be subject to the following conditions which shall be embodied in the contract between the importer and the labourers ; Introduction of labourers subject to conditions.

(a) that so long as the labourer remains in this Colony he shall be employed only on unskilled labour in the exploitation of minerals within the Witwatersrand District and in particular shall not be employed in any of the trades or occupations specified in Schedule I to this Ordinance except for unskilled labour therein ;

(b) that he shall only serve the person introducing him or any other person who has obtained a licence under this Ordinance to introduce labourers and to whom the rights of such first-mentioned person under the contract may be lawfully transferred as provided under section *eleven* hereof for a term of service to be fixed by the contract ;

(c) that on the determination by effluxion of time or otherwise of the contract or a renewal thereof the labourer shall be returned without delay at the expense of the importer to his country of origin ;

(d) that so long as the labourer remains in this Colony he shall be subject to the provisions contained in the Labour Importation Ordinance 1904 and more especially to the provisions contained in sections *fourteen fifteen nineteen twenty twenty-four twenty-five twenty-six twenty-seven twenty-eight* and in sub-sections (1) and (11) of section *thirty-one* thereof which shall be substantially set forth in a schedule to the contract.

Period of contracts. No contract to be registered until bond mentioned in section *twenty-two* be entered into.

10. (1) No such contract as aforesaid shall be for a longer period than three years but on the expiration thereof it may be renewed on the same terms and conditions as those prescribed in the last preceding section for a further period or periods not exceeding in all three years ; no such contract shall be registered at the office of the superintendent which is contrary to the provisions of this section or which does not contain the conditions prescribed in the last preceding section nor until the bond mentioned in section *twenty-two* has been entered into and lodged with the superintendent.

(2) Any person introducing or employing labourers under a contract not complying with the requirements of sections *eight* and *nine* shall be deemed to be guilty of a contravention of this Ordinance and liable to the penalties prescribed in section *six* hereof.

Transfer of contracts.

11. Any importer may with the sanction of the Lieutenant-Governor and under regulations made by him transfer in writing his rights under any contract with any labourer to any other person who has obtained a licence to import labourers under this Ordinance and has given the security mentioned in section *twenty-two* hereof ; and thereupon such labourer and such other person shall be bound by all the terms of such contract as fully as if such other person had been a party thereto originally ; provided that the superintendent is satisfied on such evidence as he may require that no consideration or value has passed or been promised for such transfer beyond the repayment by the transferee of the expenses incurred by the transferor in respect of the introduction of such labourers ; and provided further that notice of every such transfer shall be given to the superintendent and a certified copy of the instrument of transfer shall be registered at his office.

CONTROL OF LABOURERS.

Removal of labourer.

12. No importer or other person except in pursuance of a transfer duly registered shall remove a labourer from the place where he is employed without the written permission of the

superintendent nor employ such labourer elsewhere than on such place without like permission. Any person contravening this section shall be liable to a penalty not exceeding ten pounds for every labourer so removed or employed.

13. Every importer shall on the registration of the contract made by him with the labourers introduced by him deposit with the superintendent a return showing ;

(a) the number of labourers introduced by him ;

(b) the place or places at which such labourers are to be employed ;

(c) such other particulars as may from time to time be required by regulation ;

and there shall be lodged with such return an abstract of the certificate of some medical officer as to the health and fitness for labour of each such labourer.

14. No liquor mining trading general dealer's importer's hawker's or other licence whatever shall be granted to any labourer or to any person on behalf of or as agent or trustee for any labourer ; nor shall it be lawful for any labourer to acquire lease or hold either directly or indirectly any house land building or fixed property or any mynpacht claim stand or any right whatever to minerals or precious stones either in his own name or in the name of any person on behalf of or as agent or trustee for him.

15. The importer shall on the registration of the contract between him and the labourers introduced by him obtain from the superintendent for every one of such labourers an identification passport in the form prescribed by regulation which shall contain a complete record by which the holder thereof may be identified and traced and shall in any court of law be prima facie evidence of the facts therein recorded.

Any importer contravening this section shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment for a period not exceeding six months.

The said passport shall always be carried by the person described therein and shall be renewed on the first day of January of every year. There shall be paid to the superintendent by the importer on the issue and on every renewal of such passport such sum as may be prescribed by regulation not exceeding two pounds for each year.

16. The importer shall cause a register in the form prescribed by regulation to be kept of all labourers introduced or employed by him and shall enter in the said register all transfers deaths unlawful absences from work and desertions occurring among such labourers and shall cause a return in the form prescribed by regulation to be made to the superintendent within the first seven days of every month of the number of labourers introduced by him or transferred to him or by him during the preceding month the number of labourers actually employed by him on the last day of that month and the number of transfers deaths unlawful absences from work and desertions which have occurred during such month.

Returns by importer on registration of contract.

Labourer not allowed to trade or to acquire lease or hold land.

Passport to be issued to every labourer.

Register to be kept by importer.

In the case of the death of any labourer a medical certificate shall be forthwith forwarded to the superintendent as to the cause of death.

Such register shall also contain such other particulars as may from time to time be prescribed by regulation.

Register kept by importer to be open to inspection.

17. The register kept under the last preceding section shall be open at all times to the inspection of the superintendent or inspector who shall be entitled to demand from the importer such further information as he may require in respect of the entries in the said register and the returns made under the last preceding section.

Labourers must reside on premises on which they are employed.

18. Labourers shall reside on the premises on which they are employed and shall be provided with accommodation which in the opinion of the superintendent is sufficient and suitable and shall be in charge of a manager appointed by the importer and approved of by the superintendent.

Labourers must be provided with permits in case they be absent from premises on which they are employed.

19. No labourer introduced under this Ordinance shall leave the premises on which he is employed without a permit in the form and containing the particulars prescribed by regulation signed by some person authorized thereto by the importer; provided that no such permit shall authorize the absence of such labourer from such premises for more than forty-eight hours from the time when it was issued.

The said permit shall bear the date and hour on which and the period for which it was issued and also the name of the labourer to whom it was issued with his registered number and shall not authorize the labourer to go outside the Witwatersrand District.

Every person contravening the provisions of this section shall be liable on conviction to a fine not exceeding ten pounds and in default of payment to imprisonment for a period not exceeding one month.

Production of passport and permit may be demanded from any person suspected to be a labourer by any inspector appointed under this Ordinance or police officer.

20. (1) It shall be lawful for any inspector appointed under this Ordinance or for any police officer to demand from any person whom he has reason to suspect is a labourer introduced under this Ordinance the production of the passport mentioned in section *fifteen* and if it appears from such passport on being produced that such labourer is absent from the premises on which he is employed such inspector or police officer as aforesaid shall demand from him the permit mentioned in the last preceding section.

(2) Any person failing to produce his passport or permit when asked to do so under the last preceding sub-section may be arrested without warrant and taken before the nearest court of resident magistrate and on conviction for being without such passport or permit as the case may be he shall be liable to a fine not exceeding ten pounds and in default of payment to imprisonment for a period not exceeding one month.

(3) In a prosecution under the last preceding sub-section of any person not producing a passport when requested to do so it shall be presumed until the contrary is proved that the accused person is a labourer introduced under this Ordinance and on the payment of any fine or expiration of any term of imprisonment

imposed on him he shall be sent back by the superintendent to his employer and in case his employer cannot be found and he refuses to be engaged by any importer as a labourer under this Ordinance he may be forcibly returned to his country of origin by the superintendent.

21. The superintendent shall at least once during every three months transmit to the Lieutenant-Governor for publication in the *Gazette* a statement showing among other things :

Returns by superintendent giving certain particulars in respect of labourers.

(a) the number and particulars of licences issued and cancelled ;

(b) the number of labourers introduced into this Colony and their country of origin ;

(c) the number of labourers who have been returned to their country of origin and the causes of such return ;

(d) the number of labourers who have died and deserted ;

(e) the number and particulars of families introduced and returned under this Ordinance ;

(f) particulars of any contravention of this Ordinance.

RETURN OF LABOURERS TO THEIR COUNTRY OF ORIGIN.

*22. (1) Every importer shall prior to the introduction by him of labourers into this Colony enter into a bond in the form in Schedule II hereto annexed undertaking to pay the expenses incurred in connection with the return of such labourers to their country of origin in accordance with their contracts and the provisions of this Ordinance ; the said bond shall be secured in such manner as the superintendent may require.

Bond to be entered into by importer for return of labourers to their country of origin.

(2) The amount of such bond shall be fixed by the superintendent and shall be sufficient to pay for all expenses in connection with the return to their country of origin of all labourers in respect of whom such bond is entered into.

(3) If such bond be not entered into by the importer prior to the introduction of such labourers as aforesaid the licence granted to him shall be cancelled and the introduction of the said labourers shall be deemed and taken to be a contravention of section *six* of this Ordinance and the importer shall be liable to the penalties provided in that section.

23. At least thirty days before the expiration of the term of service of any labourer the importer who is responsible for the expenses of such labourer's return to his country of origin shall notify the superintendent of the date on which such service shall expire and shall take all necessary steps to the satisfaction of the superintendent for ensuring the immediate return of such labourer to his country of origin and shall carry out and comply with all such directions as may be issued by the superintendent as to the place from which such labourer shall take his departure and as to his control while in transit. Any importer contravening the provisions of this section shall be liable on conviction to a fine not exceeding one hundred pounds and in default of payment to imprisonment for a period not exceeding six months.

Notice to be given by importer to superintendent one month prior to termination of service of labourers.

24. In reckoning the term of service of any labourer for the purpose of ascertaining the time when such term expires

How period of service to be reckoned.

* See Act No. 19 of 1907, sec. 3.

all periods of time shall be excluded during which the labourer has been absent from his work for any of the following causes that is to say—

- (a) imprisonment after conviction of any offence ;
- (b) desertion ;
- (c) unlawful absence from his work duly certified as such by the superintendent ;

provided that no labourer shall be deemed to have been absent from his work within the meaning of this section on account of any desertion unless he has been duly convicted thereof ; and provided further that this section shall not apply to any imprisonment desertion or unlawful absence which is not duly recorded in the register required to be kept by the importer under section *sixteen* of this Ordinance and included in the returns made to the superintendent under the said section.

25. If any labourer who has contracted to serve in this Colony shall on or after his arrival refuse without good and sufficient reason to proceed to the place where his service is to be performed or to perform such service he may at the discretion of the superintendent and in addition to or substitution for any penalty provided by this Ordinance be ordered to be returned to his country of origin.

Labourer refusing to perform service for which he has contracted may be ordered to be returned to his country of origin. Return of labourer to country of origin on conviction of an offence.

26. The Lieutenant-Governor may in the event of any labourer being convicted of any offence and sentenced to imprisonment without the option of a fine order the return of such labourer to his country of origin at any time during the period of such imprisonment or on the expiration thereof ; provided that if such order is not given until after such labourer has completed his sentence of imprisonment the importer may take him back into his service for the unexpired portion of the period for which he has contracted in which case such order shall be withdrawn.

The Lieutenant-Governor may likewise order the return of any labourer who has been declared of unsound mind by a competent court or who has become permanently incapacitated for work by physical infirmity or disease.

27. In the case of every labourer who under the conditions of his contract or the provisions of this Ordinance is required to be returned to his country of origin the superintendent shall take all necessary steps for his return at the expense of the importer ; provided that where any labourer is ordered to be returned to his country of origin on account of any offence committed by him the importer shall be entitled to deduct the cost of so returning him from any wages then due to him.

*28. (1) Any labourer liable under his contract or under the provisions of this Ordinance to be returned to his country of origin who refuses to return may be arrested without warrant and brought before a magistrate and shall upon conviction be liable to a fine not exceeding ten pounds and in default of payment to imprisonment for a period not exceeding three months.

How labourers to be returned to their country of origin.

Penalty if labourer refuses to return to his country of origin.

* See Ord. No. 27 of 1905, secs. 1 and 7.

(2) If any labourer sentenced to pay a fine or suffer imprisonment under the last preceding sub-section shall after the payment of such fine or expiration of the term of imprisonment as the case may be refuse to return to his country of origin he may be forcibly sent back to his country of origin by the superintendent.

REGULATIONS.

†29. The Lieutenant-Governor may make regulations for any of the following purposes:—

Regulations.

- (1) for the grant refusal or revocation of licences to importers under section *seven* of this Ordinance;
- (2) for the registration identification and inspection of all labourers and for the issuing and renewing of passports to them and for the fee to be charged thereon;
- (3) for the execution registration and proper enforcement of contracts with labourers and of all transfers renewals or alterations of such contracts;
- (4) for the return of labourers to their country of origin under the provisions of this Ordinance;
- (5) for the introduction repatriation and control of the families of labourers;
- (6) for securing correct returns and the keeping of proper registers under section *sixteen* of this Ordinance; and for the proper inspection of such registers;
- (7) for the proper control of labourers;
- (8) for the medical examination of labourers on arrival in this Colony and during their residence therein; and for such measures as may be necessary to prevent the introduction or spread of infectious diseases;
- (9) for the proper housing clothing rations and food of labourers and the observance of all requisite sanitary precautions;
- (10) for the protection of the property and rights of labourers;
- (11) for the care of sick and injured labourers;
- (12) for the inspection of the premises on which labourers reside;
- (13) for preventing desertion from service by labourers;
- (14) generally for the proper administration of this Ordinance;
- * (15) *For the prevention of gambling and of the possession of gaming appliances by labourers whether in or outside any mine or compound.*

30. The Lieutenant-Governor may prescribe the following penalties for the breach of any regulations made by him in virtue of the powers conferred by this Ordinance;

Penalties for breaches of regulations.

† Regulations under this section were made by Govt. Notices Nos. 777 of 1904 (*Gazette*, 10/6/04), 1303 of 1904 (*Gazette*, 15/12/04), 57 of 1905 (*Gazette*, 27/1/05), 212 of 1905 (*Gazette*, 3/3/05 and 17/3/05), 688 of 1905 (*Gazette*, 4/8/05), 689 of 1905 (*Gazette*, 4/8/05), 949 of 1905 (*Gazette*, 3/11/05), 77 of 1906 (*Gazette*, 19/1/06), 78 of 1906 (*Gazette*, 19/1/06), 588 of 1906 (*Gazette*, 8/6/06), 696 of 1906 (*Gazette*, 13/7/06), 958 of 1906 (*Gazette*, 28/9/06), 212 of 1908 (*Gazette*, 28/2/08), 925 of 1908 (*Gazette*, 18/9/08). See also Ord. No. 27 of 1905, sec. 7.

* Sub-sec. (15) added by Ord. No. 12 of 1906, sec. 1. See said sec. 1.

- (1) in the case of a labourer ;
 - (a) a fine not exceeding twenty pounds ;
 - (b) imprisonment for a period not exceeding six months ;
- (2) in the case of any other person ;
 - (a) a fine not exceeding one hundred pounds ;
 - (b) imprisonment for a period not exceeding one year ;
 - (c) forfeiture of any licence granted by virtue of this Ordinance ;
 - (d) disqualification from holding any such licence in future.

OFFENCES.

Offences
against this
Ordinance.

31. The following persons shall be guilty of offences against this Ordinance and shall be liable on conviction to the penalties herein specified in respect of such offences ;

(1) Any labourer contravening the provisions of section *five* of this Ordinance shall be liable to the penalties provided in section *twenty-eight*.

(2) Any person who in any way aids abets or assists any labourer directly or indirectly to contravene or evade or to attempt to contravene or evade any of the provisions of this Ordinance shall unless otherwise provided be liable to * *a fine not exceeding one hundred pounds and in default of payment to imprisonment for a period not exceeding six months.*

(3) Every person who fails to deposit the returns required under section *thirteen* or fails to keep the register make the returns or give the information required under sections *sixteen* and *seventeen* of this Ordinance or who wilfully keeps a false register or makes a false return or gives false information or who being required under section *eleven* to give notice of the transfer of any contract with a labourer fails to do so shall be liable to a fine not exceeding one hundred pounds and in default of payment to imprisonment for a period not exceeding six months.

(4) Every importer who unlawfully withholds any wages or portion of wages earned by a labourer shall be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment for a period not exceeding three months.

(5) Any person who employs labourers otherwise than on unskilled labour in the exploitation of minerals in the Witwatersrand District shall be liable to a fine not exceeding five hundred pounds and in default of payment to imprisonment for a period not exceeding two years.

(6) Any person who knowingly transfers or attempts to transfer or procures the transfer of any labourer to a person other than one licensed to introduce labourers and any person who shall employ any labourer not imported by or lawfully transferred to him shall be liable to a fine not exceeding five hundred pounds and in default of payment to imprisonment for a period not exceeding two years.

(7) Any person who shall knowingly sell lease or otherwise transfer or attempt to transfer any house land building or

* Words in italics substituted by Ord. No. 27 of 1905, sec. 12.

fixed property or any mynpacht claim stand or any right whatever to minerals or precious stones to any labourer or to any person on behalf of or as agent or trustee for any labourer shall be liable to a fine not exceeding five hundred pounds and in default of payment to imprisonment for a period not exceeding two years.

(8) Any person who shall knowingly hold purchase lease or otherwise acquire or attempt so to do any house land building or fixed property or any mynpacht claim stand or any right whatever to minerals or precious stones or shall carry on any trade or business on behalf of or as agent or trustee for any labourer shall be liable to a fine not exceeding five hundred pounds and in default of payment to imprisonment for a period not exceeding two years.

(9) Any person who shall obstruct any duly authorized officer in the discharge of his duties under this Ordinance or any regulations made thereunder shall be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment for a period not exceeding three months.

(10) Any person who shall harbour or conceal any labourer who has deserted from the service of his importer or who has committed any breach of this Ordinance or who shall aid and abet any labourer to desert as aforesaid shall be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment for a period not exceeding three months.

(11) Any labourer who shall desert from the service of his importer or shall refuse to work for him when required to do so or who shall unlawfully absent himself from work or who shall perform any work or carry on any business other than that of unskilled labour in the exploitation of minerals or who shall enter the service of any person other than that of the person importing him or of the person to whom his contract has been lawfully transferred under this Ordinance shall be liable to a fine not exceeding twenty-five pounds and in default of payment to imprisonment for a period not exceeding two months.

(12) Any importer who neglects forthwith to report to the superintendent the desertion of any labourer while in his employment shall be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment for a period not exceeding three months.

(13) Any labourer who shall have any interest whether as partner or otherwise in any trade or business shall be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment for a period not exceeding three months.

(14) Any person who shall give or receive any valuable consideration for the transfer of any labourer contrary to the provisions of section *eleven* of this Ordinance shall be liable on conviction to a fine not exceeding five hundred pounds or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

(15) *Added by Ordinance No. 27, 1905, section eight, but repealed by Ordinance No. 25, 1906, section one.*

(16) *Added by Ordinance No. 27, 1905, section eight, but repealed by Ordinance No. 25, 1906, section one.*

* (17) *Any labourer who shall practice any fraud or deception in the performance of any work which he is bound to perform or who shall wilfully or negligently lose throw away or damage the property of his employer or who shall use threatening or insulting language towards his employer or towards any one placed in lawful authority over him shall be liable to a fine not exceeding five pounds or to imprisonment not exceeding one month or to both such fine and such imprisonment.*

The foregoing penalties shall be independent of any other punishment to which the offender shall be liable.

MISCELLANEOUS.

Certain laws not to apply.

32. The provisions of the Masters and Servants Law (No. 13 of 1880) of Law No. 3 of 1885 or any amendment thereof and of sections *two to eight* inclusive of the Peace Preservation Ordinance 1903 shall not apply to any labourer introduced under this Ordinance or to any contracts made thereunder.

Families of labourers.

33. (1) It shall not be lawful for the wife or any member of the family of any labourer or any female belonging to the race or tribe of any labourer and accompanying such labourer to enter be or reside in this Colony unless they be respectively introduced by a duly licensed importer under as far as practicable the same conditions and restrictions as are provided in this Ordinance for the introduction of labourers.

†(2) The family of any labourer introduced into this Colony by any importer under any regulations made by the Lieutenant-Governor and any children of such labourer born in this Colony shall be returned by the importer to the country of origin of such labourer on the death of such labourer or on the happening of any of the events which under this Ordinance renders such labourer liable to be returned to his country of origin; and such importer as aforesaid shall give the like security for the payment of the expenses incurred in connection with the return of such family as is required under section *twenty-two* of this Ordinance.

Introduction of British Indians for employment on railways.

34. Nothing in this Ordinance contained shall apply to the introduction into this Colony by the Lieutenant-Governor of British Indians to be employed on the construction of railways sanctioned by the Governor or on other public works; provided always that such introduction shall be subject to such regulations as the Legislative Council may approve of; and provided further that the provisions of this Ordinance in respect of the return of labourers to their country of origin shall *mutatis mutandis* apply to such British Indians.

Title and date of taking effect.

35. This Ordinance may be cited for all purposes as the Labour Importation Ordinance 1904 and shall not take effect

* Sub-sec. (17) added by Ord. No. 27 of 1905, sec. 8.

† See Ord. No. 27 of 1905, sec. 7.

unless and until the Governor shall proclaim in the *Gazette* that it is His Majesty's pleasure *not to disallow the same and thereafter it shall come into operation upon such a date as the Governor shall notify by Proclamation.

SCHEDULE I.

Amalgamator.	Mechanic.
Assayer.	Miller.
Banksman.	Millwright.
Blacksmith.	Mine Carpenter.
Boilermaker.	Mine Storeman.
Brass-finisher.	Mine Overseer.
Brassmoulder.	Onsetter.
Bricklayer.	Overseer, in any capacity other than the management and control of labourers.
Brickmaker Overseer.	Painter.
Carpenter.	Patternmaker.
Clerk.	Pipeman.
Coppersmith.	Plasterer.
Cyanide Shiftsman.	Platelaye.
Drill Sharpener.	Plumber.
Driver of air or steam winch.	Pumpman.
Driver of mechanical or electrical machinery.	Quarryman Overseer.
Electrician.	Rigger.
Enginedriver.	Sampler.
Engineer.	Signaller.
Fireman Overseer.	Skipman.
Fitter.	Stonecutter.
Ganger.	Timberman.
Ironmoulder.	Timekeeper.
Joiner.	Tinsmith.
Machine Rock Driller.	Turner.
Machine Sawyer.	Wire Splicer.
Machinist.	Woodworking Machinist.
Mason.	

SCHEDULE II.

Know all men by these presents that A.B. of..... C. D. of..... and E. F. of..... are held and firmly bound unto our Sovereign Lord Edward VII. by the Grace of God of the United Kingdom of Great Britain and Ireland King Defender of the Faith in the sum of..... for each labourer imported by the said A. B. under a contract dated..... made under the provisions of the Labour Importation Ordinance 1904 to be paid to our said Lord the King his heirs and successors to which payment well and truly to be made we bind ourselves and every one of us jointly and severally for and in the whole our heirs executors and administrators by these presents.

The condition of this obligation is such that if the above bounden A. B. returns the labourers imported by him under the aforesaid contract when required so to do in accordance with the provisions of the aforesaid Ordinance then this obligation shall be void otherwise it shall be of full force and effect.

(Signed).....

In the presence of

* See Proc. (Admn.) No. 16 of 1904 in *Government Gazette Extraordinary*, 14th March, 1904, whereby the Governor proclaims that it is His Majesty's pleasure not to disallow the Ordinance ; and Proc. (Admn.) No. 32 of 1904 (*Gazette*, 20/5/04), putting this Ordinance in force from the date of the first publication of this Proclamation.

No. 18 of 1904.]

[Promulgated 8th July, 1904.]

ORDINANCE

REGULATING THE ISSUE OF TITLES TO LAND GRANTED OR SOLD
BY THE GOVERNMENT OF THE LATE SOUTH AFRICAN REPUBLIC.

Assented to 5th July, 1904.

WHEREAS title-deeds for certain farms erven and other land sold by the Government of the late South African Republic or granted by the said Government as burgher-rights compensation for burgher-rights or otherwise have not yet been issued ;

And whereas it is desirable to empower the Lieutenant-Governor to fix a time after which the right to take out title-deeds for such farms erven or other land shall be forfeited ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows ;

Applications
for title-deeds.

1. All persons to whom any farm erf or other land may either have been sold by the Government of the late South African Republic or have been granted by the said Government as burgher-rights or compensation for burgher-rights or otherwise and who have not taken out title-deeds for such land may apply to the Registrar of Deeds for such title-deeds.

All applications for such title-deeds must be accompanied by sworn declarations and wherever procurable by documentary evidence in support of the claim of the applicants to such land.

Conditions to
be fulfilled
before title-
deeds issued.

2. No title-deed shall be issued unless :

(a) a diagram of the land approved or confirmed by the Surveyor-General be filed with the Registrar of Deeds which diagram shall in all cases be furnished at the expense of the applicant ;

(b) all taxes from the date of the sale or grant and all duties which may be due to the Government in respect of the land or the transfer thereof be paid ;

(c) the purchase price together with interest thereon at the rate of six per centum from the date of purchase or from the date on which any instalment became due as the case may be or so much thereof as may be unpaid be paid ; provided that no interest shall be payable for the period from the eleventh day of October 1899 to the thirty-first day of May 1902 inclusive.

Date fixed by
Lieutenant-
Governor up
to which
applications
will be
received.

*3. It shall be lawful for the Lieutenant-Governor to fix by Proclamation in the *Gazette* a date after which no application for title-deeds to land sold or granted by the Government of the late South African Republic will be received and to declare that

* The date was fixed by Proc. (Admn.) No. 45 of 1904, and successively extended by Procs. (Admn.) 101 of 1904 ; 33, 33, and 113 of 1905 ; 15, 32, and 92 of 1907 ; 25 of 1909 ; 11 of 1910 (extending date to 31st December, 1910).

all land so sold or granted for the title-deeds to which no application shall have been made by the said date shall remain vested in the Government of this Colony as Crown Land ; provided that any person who shall between the third September 1902 and such date have made application to the Registrar of Deeds for title-deeds to any land so sold or granted shall be entitled within such further period as may be allowed by the Lieutenant-Governor to establish his right to and take out title-deeds to such land failing which such land shall remain vested in the Government of this Colony as Crown Land ; and provided further that no person who shall fail to take out title-deeds as aforesaid shall be entitled to claim compensation for any improvements he may have made on the land or to recover any portion of the purchase price or other moneys which he may have paid to the Government of the late South African Republic or to the Government of this Colony.

4. This Ordinance shall not apply to any land granted by the Government of the late South African Republic under the provisions of Law No. 8 of 1886.

Ordinance
not applic-
able to land
held under
Law No. 8
of 1886.

5. This Ordinance may be cited as the Land Titles Ordinance 1904.

Title.

*Sections 11, 12 + 14 by act
16 of 1914*

No. 19 of 1904.] [Promulgated 22nd July, 1904.]

ORDINANCE

TO CONSOLIDATE THE LAW AS TO THE APPOINTMENT AND JURISDICTION OF RESIDENT JUSTICES OF THE PEACE AND JUSTICES OF THE PEACE.

Assented to 20th July, 1904.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

PRELIMINARY.

Repeal of laws.

1. The laws mentioned in the First Schedule hereto shall be and are hereby repealed to the extent set forth in the second column thereof together with so much of any other law as may be repugnant to or inconsistent with the provisions of this Ordinance.

RESIDENT JUSTICES OF THE PEACE.

Power to Lieutenant-Governor to appoint resident justices of the peace.

*2. The Lieutenant-Governor may from time to time appoint fit and proper persons to be resident justices of the peace and every such resident justice of the peace shall have and exercise the powers jurisdiction and duties conferred and imposed by this Ordinance or by any other law within an area which may be from time to time defined by Proclamation in the *Gazette*. The Lieutenant-Governor may remove any person so appointed from his office.

Resident justices of the peace appointed before passing of Ordinance to be deemed to have been appointed under this Ordinance.

3. Every resident justice of the peace appointed under the provisions of Law No. 7 of 1894 and acting as such at the date of the passing of this Ordinance shall be deemed to have been appointed under this Ordinance and any Proclamation defining the area of jurisdiction of such resident justice of the peace and issued under the said law shall be deemed to have been a Proclamation issued under the last preceding section.

Places at which courts of resident justices of the peace to be held.

4. Every resident justice of the peace shall hold a court for the exercise of the jurisdiction by this Ordinance conferred at such fixed place within the area defined as aforesaid as the Lieutenant-Governor may from time to time prescribe and may hold such court for the exercise of such jurisdiction at places other than such fixed place aforesaid whenever it shall appear necessary or expedient so to do.

Officers of court of resident justices of the peace.

5. The Lieutenant-Governor may appoint to any court of resident justice of the peace a messenger thereof and whenever it shall appear necessary a clerk thereof and every such messenger or clerk so appointed shall subject to the provisions of this

* For appointments and areas of jurisdiction of resident justices of the peace see Procs. (Admn.) No. 91 of 1909, Nos. 2 and 10 of 1910.

Ordinance have respectively the same powers and be subject to the same duties as are conferred and imposed on messengers or clerks of courts of resident magistrates. Any messenger or clerk appointed to the court of a resident justice of the peace established under the provisions of Law No. 7 of 1894 and acting as such messenger or clerk at the date of the taking effect of this Ordinance shall be deemed to have been appointed under this Ordinance.

6. Every person appointed a resident justice of the peace shall before exercising any of the functions of his office take the oath of allegiance and oath of office set forth in the Second Schedule hereto before the resident magistrate of the district in which his area of jurisdiction is situate; provided always that it shall not be necessary for any person who has been appointed a resident justice of the peace under Law No. 7 of 1894 and who shall be acting as such at the date of the taking effect of this Ordinance to take the oaths prescribed by this section.

Oaths of office by resident justice of the peace.

*7. Every resident justice of the peace shall have jurisdiction in respect of the crimes and offences mentioned in the Third Schedule hereto and in respect of no other crime or offence whatever unless jurisdiction to try such crime or offence be specially conferred by any law hereafter enacted; provided that it shall not be lawful for any resident justice of the peace to punish any offender in any higher or more severe manner than by a fine not exceeding twenty-five pounds or by imprisonment with or without hard labour for a period not exceeding one month or by both such fine and such imprisonment.

Jurisdiction of resident justice of the peace in criminal cases.

8. (1) It shall be lawful for any person who shall be convicted by any resident justice of the peace to appeal against any such conviction and any sentence thereon to the resident magistrate of the district in which the area of jurisdiction defined as aforesaid is situate.

Appeals to resident magistrate against convictions or sentences of resident justice of the peace.

(2) Any such person wishing to appeal as aforesaid shall proceed with such appeal within three days after any sentence imposed upon such conviction by sending to or delivering to such resident justice of the peace a written statement setting forth the grounds upon which such appeal is based.

(3) Such resident justice of the peace shall forthwith after receipt of such written statement aforesaid forward the same together with the records of the case to the resident magistrate of his district.

(4) Such resident magistrate shall as soon as possible proceed to hear and determine such appeal and may confirm set aside alter or reduce any such sentence imposed as aforesaid as justice shall require.

(5) The execution of any sentence of imprisonment imposed by a resident justice of the peace shall be suspended on the noting of any appeal under this section until the determination thereof if the person sentenced shall give reasonable bail to surrender himself to undergo imprisonment either as originally

* For extended jurisdiction see also Ord. No. 6 of 1906, sec. 33 (2); Act No. 23 of 1907, sec. 8.

imposed or as reduced by the resident magistrate under the powers of this section in the event of the sentence not being set aside on such appeal.

(6) The term "resident magistrate" in this section shall not include an assistant resident magistrate.

Procedure by resident justices of the peace as in courts of resident magistrate.

9. In the exercise of any jurisdiction conferred upon a resident justice of the peace under this Ordinance or any other law such resident justice of the peace shall save as otherwise expressly provided in this Ordinance observe the provisions of the Magistrate's Court Proclamation 1902 and any amendment thereof and any rules made thereunder so far as the same shall be applicable.

Resident justice of the peace to be *ex officio* justice of the peace and marriage officer for natives.

10. Every resident justice of the peace shall within the magisterial district in which his area of jurisdiction is situate be deemed and taken to be a justice of the peace appointed under section *thirteen** of this Ordinance and shall have and exercise all the powers and duties conferred and imposed on justices of the peace by the said† section *thirteen*‡ and shall also be deemed to be a person appointed to solemnize marriages between coloured persons under article *two* of Law No. 3 of 1897 within the area of his jurisdiction defined as aforesaid. Every such resident justice of the peace shall further have and exercise all powers and duties of an administrative nature conferred and imposed on resident justices of the peace by any law for the time being in force.‡

JUSTICES OF THE PEACE.

Appointment of justices of the peace.

11. The Lieutenant-Governor may from time to time appoint fit and proper persons to be justices of the peace for the whole Colony or for any district of the Colony and may remove any person so appointed from his office.

Powers duties and jurisdiction of justices of the peace.

12. Every justice of the peace shall be authorized and is hereby required to administer oaths and take solemn declarations in matters where statements upon oath or solemn declarations are required by law or when otherwise requested so to do and further to exercise all powers jurisdictions and duties conferred and imposed on justices of the peace by any law which may be in force from time to time.

Justices of the peace appointed before this Ordinance.

13. Every justice of the peace appointed at the date of the passing of this Ordinance under Law No. 7 of 1894 or Proclamation No. 7 of 1901 and acting as such at the said date shall be deemed to have been appointed under this Ordinance and shall be exempt also from the provisions of the next succeeding section.

Oaths of allegiance and office by justice of the peace. Title and operation.

14. Every justice of the peace shall before exercising any functions of his office take the oath of allegiance set forth in the Second Schedule hereto before the resident magistrate of the district in which he shall reside.

15. This Ordinance may be cited as the Resident Justices of the Peace and Justices of the Peace Ordinance 1904 and shall take effect from and after the first day of September 1904.

* As in *Gazette*; in Ord. 1904 the word "*eleven*" is given.

† As in *Gazette*; in Ord. 1904 this reads "by section *twelve*".

‡ For such administrative powers see Law No. 12 of 1895, sec. 18; Ord. No. 38 of 1904, sec. 4 (1).

FIRST SCHEDULE.

LAWS REPEALED.	EXTENT OF REPEAL.
Law No. 7 of 1894	The whole.
Proclamation No. 7 of 1901	The whole.
Ordinance No. 15 of 1902	The whole.

SECOND SCHEDULE.

FORM OF OATH OF ALLEGIANCE.

I.....do sincerely promise and swear that I will be faithful and bear true allegiance to His Majesty King Edward VII. His Heirs and Successors according to Law.

SO HELP ME GOD.

.....

FORMS OF OATH OF OFFICE.

Resident Justice of the Peace.

I.....do promise and swear that I will faithfully and diligently execute to the best of my ability the several duties of the office of resident justice of the peace and will be just and equitable in such office and will do right to all manner of people after the laws of this Colony without fear affection favour or ill-will.

SO HELP ME GOD.

.....

**THIRD SCHEDULE.*

Contraventions of Law No. 5 of 1880 (Fish Preservation Law) and any amendment thereof.

Contraventions of Law No. 13 of 1880 (Master and Servants Law) and any amendment thereof.

Contraventions of Law No. 15 of 1880 (Forest Preservation Law) and any amendment thereof and any regulations made thereunder.

Contraventions of Law No. 21 of 1895 (Squatters Law), and any amendment thereof.

Contraventions of Laws relating to pounds.

Contraventions of any Law for the prevention and suppression of vagrancy.

Contraventions of †Game Preservation Ordinance, 1902, and any amendment thereof and any regulations made thereunder.

Contraventions of the Native Pass Laws, and any regulations made thereunder.

Contraventions of the Diseases of Stock Ordinance 1902, and any amendment thereof and of any regulations made thereunder.

Contraventions of Native Tax Ordinance 1902,‡ and any regulations made thereunder.

Contraventions of Section 66 of Ordinance No. 32 of 1902.

Contraventions of Natives' Night Passes Ordinance 1902.

Contraventions of any by-laws or regulations made by any Local Authority or ||by the Town Regulations 1899 ||thereunder.

Assaults where no dangerous wound is given and no dangerous weapon is used.

Thefts of any nature other than stock theft where the value of property stolen does not exceed five pounds and any attempt to commit such offence.

Receiving stolen property (other than stock) where the value of the property stolen does not exceed five pounds.

° See now Ord. No. 5 of 1906.

† See now Ord. No. 6 of 1905.

‡ See now Act No. 9 of 1908.

|| As in *Gazette*; in Ord. 1904 this reads "or of the Town Regulations 1899".

A.D. 1904.]

*Law of Evidence Proclamation
Amendment.*

[Ord. No. 21.]

Read Proc 16 of 1902 with this.

No. 21 of 1904.]

[Promulgated 22nd January, 1904.]

ORDINANCE

TO AMEND THE LAW OF EVIDENCE PROCLAMATION 1902.

Assented to 20th July, 1904.

WHEREAS it is desirable to amend the Law of Evidence Proclamation 1902 ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :

*1. Notwithstanding anything to the contrary contained in Proclamation No. 16 of 1902 the wife or husband of an accused person shall be competent and compellable to give evidence for the prosecution where the said accused person is charged with the crime of bigamy whether the said crime was committed before or after the passing of this Ordinance.

2. This Ordinance may be cited as the Law of Evidence Proclamation Amendment Ordinance 1904.

Wife or
husb and com
petent and
compellable
witness for
prosecution
on charge of
bigamy.

Title.

* Cf. sec. 12 of Proc. No. 16 of 1902.

No. 22 of 1904.]

[Promulgated 22nd July, 1904.]

ORDINANCE

TO REPEAL THE SUPREME COURT APPELLATE JURISDICTION
EXTENSION ORDINANCE, 1902.

Assented to 20th July, 1904.

WHEREAS by the Supreme Court Appellate Jurisdiction Extension Ordinance 1902 jurisdiction was conferred upon the Supreme Court of this Colony to entertain hear and determine appeals from the decisions of the High Court of the Orange River Colony or a Judge thereof ;

And whereas the Lieutenant-Governor has been advised of the passing of a law in the Orange River Colony providing for the hearing and determining of such appeals by a Court in the said Colony ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. The Supreme Court Appellate Jurisdiction Extension Ordinance 1902 shall be and is hereby repealed. Repeal of
Ordinance
No. 12 of 1902
2. This Ordinance may be cited as the Supreme Court Appellate Jurisdiction Extension (Repealing) Ordinance 1904. Title.

No. 23 of 1904.]

[Promulgated 29th July, 1904.]

*ORDINANCE

TO AMEND LAW NO. 15 OF 1897.

Assented to 28th July, 1904.

WHEREAS it is expedient to amend the law as to the isolation and detention of persons affected with leprosy :

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

Repeal.

1. Law No. 15 of 1897 shall be and is hereby repealed but notwithstanding such repeal all by-laws and regulations made under the said law shall so far as the same are not repugnant to the provisions of this Ordinance remain in force till rescinded altered or amended by regulations made under section *twenty-six* hereof.

Interpreta-
tion of terms.

2. In this Ordinance unless inconsistent with the context ;
“leprosy” shall mean all forms of disease caused by the bacillus lepræ of Hansen ;

“asylum” shall mean any building or collection of buildings erected and established under the provisions of section *three* of this Ordinance and used for the treatment or detention of persons affected with leprosy together with the land surrounding such buildings and set apart and defined under the said section for the occupation of such persons ;

† “medical practitioner” shall mean any person duly registered as such under any law of this Colony relating to the admission and registration of medical practitioners ;

“superintendent” shall mean any person appointed under section *fourteen* of this Ordinance or any person appointed before the passing of this Ordinance to take control of any asylum and any person lawfully acting as a superintendent ;

“police officer” shall mean any member of the South African Constabulary or of the Town Police or of any Police Force which may from time to time be established by law ;

“magistrate” shall mean any resident magistrate or assistant resident magistrate of any district of this Colony ;

“the court” shall mean the Supreme Court or any judge thereof sitting in chambers the Witwatersrand High Court or any Circuit Court.

ESTABLISHMENT OF ASYLUMS.

3. (1) It shall be lawful for the Lieutenant-Governor to erect and establish from time to time within the Colony asylums for the detention of persons removed thereto under this Ordinance and

* See Act No. 5 of 1907, Act No. 2 of 1908, and Act No. 4 of 1908.

† Cf. Ord. No. 19 of 1904, sec. 3.

Power to appropriate Crown land and establish leper asylums thereon.

for the purpose of acquiring sites for the erection and establishment of asylums to appropriate and set apart any unalienated and unreserved crown land and to order the fencing and enclosing of any land so appropriated and set apart.

(2) The establishment of any asylum and boundaries of any land appropriated and set apart for such purpose shall be notified and defined by notice in the *Gazette*.

(3) Any land with the buildings and other erections thereon used at the date of the passing of this Ordinance as an asylum shall be deemed to have been appropriated set apart and defined within the meaning of this section and to have been established as an asylum under this section.

ISOLATION—REMOVAL AND DETENTION OF LEPERS.

4. Whenever it shall come to the knowledge of any person that some other person outside an asylum is affected with or is suspected of being affected with leprosy such first-named person shall forthwith report such fact or suspicion upon oath to the magistrate of the district in which he is residing. Any person who shall neglect to act in accordance with this section shall be guilty of an offence.

Duty of all persons to notify suspected cases of leprosy.

5. Every magistrate to whom a report is made under the last preceding section shall issue an order requiring a police officer to take steps that the person mentioned in such report be detained in a place of isolation in manner prescribed by regulations under this Ordinance until he shall have been examined as in the next succeeding section provided.

Duty of magistrate to isolate suspect on notification.

6. Every magistrate who shall have issued such isolation order as aforesaid shall cause such person to be examined as soon as possible by two medical practitioners one of whom shall if possible be the district surgeon and obtain a report from them of such examination.

Duty of magistrate to cause medical examination to be made of suspect.

7. If such medical practitioners aforesaid shall report that the person alleged to be affected with leprosy is not so affected the magistrate shall forthwith discharge him from detention in isolation.

Discharge of suspect if not affected.

8. (1) If such medical practitioners aforesaid shall report that the person alleged to be affected with leprosy is so affected or that it is doubtful whether he is so affected or not the magistrate shall order him as in this section described to be removed to an asylum therein to be detained in accordance with the provisions of this Ordinance.

Issue of interim reception order by magistrate if medical officers report suspect to be affected and in doubtful cases.

(2) Any such order as is in this section described shall be termed an interim reception order shall be addressed to the superintendent of some asylum and shall be delivered to a police officer.

(3) An interim reception order shall authorize any police officer to conduct the person named therein to the superintendent of the asylum to whom it shall be addressed and shall further authorize the reception and detention of such person in such asylum until the Colonial Secretary shall have transmitted to such superintendent an order of further detention or discharge as hereinafter provided.

Duty of superintendent to make medical examination and transmit reports to Colonial Secretary.

*9. Any superintendent who has received a person into an asylum under an interim reception order shall forthwith cause a medical examination of such person to be made by one of the visiting medical officers, or by another medical practitioner appointed for the purpose by the Colonial Secretary, and shall, as soon thereafter as possible, transmit to the Colonial Secretary the report of such examination, together with the interim reception order and the reports of the medical practitioners mentioned in section six.

Voluntary submission to treatment of persons affected with leprosy.

10. If any person suspects that he is affected with leprosy and shall desire to submit himself to treatment therefor or to be placed in isolation in accordance with the provisions of this Ordinance he may for such purpose present himself to the Magistrate of the district in which he is residing and such magistrate shall thereupon having ordered such person to be detained in isolation as in section five is provided require two medical practitioners (one of whom shall if possible be the district surgeon) to examine such person; and if such medical practitioners shall report that such person is not affected with leprosy the provisions of section seven shall apply in the case of such person; and if such medical practitioners shall report that such person is affected with leprosy or that it is doubtful whether such person is so affected or not the provisions of sections eight and nine shall apply to such case.

Issue of detention order by Colonial Secretary when satisfied that person detained under reception order is affected with leprosy.

11. (1) Whenever the Colonial Secretary shall be satisfied that any person detained under an interim reception order as aforesaid is affected with leprosy he shall make and sign an order (herein described as a detention order) which shall be addressed to the superintendent of some asylum.

(2) A detention order shall authorize the detention in accordance with the provisions of this Ordinance of the person named therein and shall be in force for one year from the date thereof and no longer unless renewed as hereinafter provided.

(3) One month prior to the expiration of one year from the date of a detention order the superintendent of the asylum in which such person is detained shall transmit to the Colonial Secretary a report as to the condition of the person named in such order and any further information which the Colonial Secretary may require and if on consideration of such report and information the Colonial Secretary shall consider the further detention of such person necessary or expedient he may renew such detention order for a further period not exceeding three years. The same procedure shall be repeated one month before the expiry of each such further period and such detention order may at the end of each such further period under like circumstances be renewed as aforesaid unless discharge of such person is sooner ordered.

Procedure by Colonial Secretary when not satisfied that person detained under reception order is affected with leprosy.

12. (1) Whenever the Colonial Secretary shall not be satisfied that a person detained under an interim reception order is affected with leprosy he shall submit all medical reports transmitted to him under this Ordinance concerning such person to the medical officer of health for the Colony and may direct any further medical examination he may consider necessary of such person.

* This section substituted by Act No. 2 of 1908, sec 1.

(2) If on consideration of the report of such medical officer of health or of the further medical examination (if any) he is satisfied that such person is affected with leprosy he shall make and sign a detention order as in section *eleven* is provided.

(3) If on consideration of the report of the medical officer of health aforesaid or of the further medical examination (if any) he shall not be satisfied that a person detained under an interim reception order is affected with leprosy he shall transmit an order to the superintendent of the asylum in which such person is detained directing his discharge therefrom.

13. The Colonial Secretary may notwithstanding anything in this Ordinance contained at any time on sufficient reason to him appearing issue an order to the superintendent of any asylum directing the discharge of any person from detention therein or the removal of any person detained therein to another asylum for detention under this Ordinance.

Power to Colonial Secretary to order discharge from asylum at any time.

MANAGEMENT OF ASYLUMS.

*14. *The Governor may from time to time appoint superintendents to have the direction and management of any asylum. Every superintendent so appointed shall, in carrying out his powers and duties, be subject to the discretion and control of the Colonial Secretary.*

Appointment of superintendents of asylums.

15. It shall be the duty of every superintendent to reside at or near the asylum to which he shall be appointed to inspect from time to time in accordance with regulations made hereunder such asylum and the persons detained therein and *† arrange for the performance* all medical offices necessary in respect of such persons to cause proper food and necessary comforts to be supplied to such persons and to cause the premises to be properly and cleanly kept and to perform such other duties and exercise such powers as may be imposed and conferred upon him by this Ordinance or by any regulations made thereunder.

Duty of superintendents to reside at or near asylums.

16. (1) No person shall be permitted to enter any asylum except in accordance with the regulations to be made in that behalf under this Ordinance.

Intercourse of persons detained in asylums with each other and persons outside.

(2) Male and female persons and white and coloured persons who are detained under this Ordinance shall be kept in separate parts of an asylum; provided that it shall be in the discretion of the superintendent to permit married persons over the age of fifty years both of whom are persons affected with leprosy to live together in any asylum.

(3) Save as in this Ordinance provided and save as may be provided by any regulations made thereunder no communication or intercourse shall be allowed between persons detained in any asylum and any person not detained therein who is not an officer or attendant thereof.

17. (1) Every person placed in isolation or during the course of removal to or while detained in an asylum under the provisions of this Ordinance shall be deemed to be in lawful custody until discharged therefrom under this Ordinance and while in such custody shall be subject to the provisions of this Ordinance and any regulations made thereunder.

Suspects and detained lepers to be deemed in lawful custody.

* This section substituted by Act No. 2 of 1908, sec. 2.

† Words in italics substituted by Act No. 2 of 1908, sec. 3.

(2) Any person who shall escape from such lawful custody may be pursued arrested without warrant and taken back into custody by any person whomsoever wheresoever he may be found.

(3) Any person who shall aid or attempt to aid any person detained in lawful custody under this Ordinance in escaping or in attempting to escape from such lawful custody shall be guilty of an offence and shall be liable upon conviction to the penalties hereinafter provided.

Persons detained may receive visits subject to regulations.

18. Every person detained in lawful custody under the provisions of this Ordinance shall be permitted to receive visits from relatives friends or legal advisers at such reasonable times and subject to such restrictions as may be determined by regulations made under this Ordinance.

Cost of erection and maintenance of asylums to be defrayed out of public revenue.

19. The costs of the erection establishment and maintenance of asylums of the removal of persons to and of the maintenance of any persons detained therein (save in so far as such costs of maintenance may be otherwise defrayed in accordance with section *twenty* of this Ordinance) the salaries and wages of superintendents attendants or other officers of asylums and of the disinfecting and cleansing of the residence of persons isolated and the maintenance of such persons during the period of isolation shall be defrayed out of the general revenue of the Colony.

Power to superintendent to allow persons detained to build habitations for themselves and defray cost of maintenance.

20. It shall be lawful for the superintendent whenever a person detained under this Ordinance shall be possessed of sufficient means to receive or recover from such person the expense of his maintenance and to allow such person to build for himself or contract to be built a habitation within the limits of an asylum and such superintendent may for such purposes enter into on behalf of the Colonial Secretary special agreements with such person or his lawful representative.

Power to Lieutenant-Governor to confer upon superintendent jurisdiction to try certain offences.

†21. (1) It shall be lawful for the Lieutenant-Governor to confer upon any superintendent jurisdiction to try the following classes of crimes and offences if committed within any asylum for which he has been appointed that is to say;

(a) such crimes and offences committed by persons detained under this Ordinance which are triable summarily by a court of resident magistrate under its ordinary jurisdiction together with any contraventions of the provisions of this Ordinance or of any regulation made thereunder by such persons aforesaid;

(b) contraventions of the provisions of this Ordinance or of any regulations made thereunder by attendants guards and other * *subordinate* officers of asylums.

(2) Any proceedings taken and any judgment or sentence given or imposed by a superintendent under the provisions of this section shall be in all respects in accordance with and subject to the provisions of the Magistrate's Court Proclamation 1902 and any law amending the same in the same manner as any proceedings judgment or sentence taken given or imposed in a court of resident magistrate.

† For appointments under this section see Procs. (Admn.) Nos. 29 of 1905, 19 of 1906, and 88 of 1907.

* Words in italics inserted by Act No. 2 of 1908, sec. 4.

(3) The Lieutenant-Governor may at any time withdraw from any superintendent the jurisdiction which has under this section been conferred upon him.

(4) Nothing in this section contained shall be deemed to take away the jurisdiction of any court of resident magistrate under any law in respect of the trial of or inquiry into crimes or offences and it shall be the duty of the superintendent whenever any offence shall be committed in any asylum under his charge which he has no jurisdiction to try to report the fact to the magistrate of the district who is hereby authorized if he shall think fit to hold his court at such asylum for the trial of or inquiry into such offence.

‡22. (1) The court may appoint a curator for the temporary or permanent care and administration of any property of a person removed to an asylum for detention under this Ordinance and the provisions of sections *thirty-six* to *forty-two* inclusive of the Lunacy Proclamation 1902 shall *mutatis mutandis* apply for the purposes of such care and administration of the property of any such person and the Attorney-General shall be *ex officio* the *curator ad litem* of any such person during such detention.

Care and administration of property of persons confined or detained in asylums.

(2) It shall be lawful for the Attorney-General to lay any reports or evidence concerning the removal of a person for detention under this Ordinance together with evidence as to any property possessed by such person before the court for its consideration and the court may upon consideration of such reports and evidence appoint a *curator bonis* for the care or custody of the property of any such person aforesaid and where it appears to the court desirable that temporary provisions should be made for the maintenance or other necessary requirements of such person or any member of his family out of any money or available securities belonging to him in the hands of his bankers or of any other person the court may authorize such banker or other person to pay to the *curator bonis* such sums as may be deemed necessary and may give directions as to the application thereof for the benefit of such person aforesaid or for the relief of his family or any member thereof.

(3) Notwithstanding anything in this section contained when any person who has been removed to an asylum for detention under this Ordinance possesses property the estimated value of which does not exceed five hundred pounds in respect of the *corpus* thereof or fifty pounds per annum in respect of the income thereof the Master of the Supreme Court may on the application of the official *curator ad litem* appoint a curator of the property of such person.

MISCELLANEOUS.

23. Whenever any person shall have been placed in isolation by order of a magistrate under section *five* of this Ordinance such magistrate shall cause the residence of such person to be forthwith cleansed and disinfected in accordance with the advice of the district surgeon and in accordance with any further directions given in that behalf by the Medical Officer of Health of this Colony.

Cleansing and disinfecting of residence of persons isolated.

‡ See Ord. No. 15 of 1905, sec. 9.

Photographing of persons confined in asylums.

24. (1) It shall be the duty of every person detained in an asylum under this Ordinance to submit himself to be photographed from time to time as the superintendent shall think fit to enable the course of his disease to be ascertained.

(2) Any such person who shall refuse to allow himself to be photographed as aforesaid or shall obstruct any person entrusted with this duty in the execution of such duty shall be guilty of an offence.

(3) Any person who shall give supply or exhibit any such photograph obtained under this section to any person to whom he is not expressly or by regulation authorized to give supply or exhibit such photograph shall be guilty of an offence.

Penalties for contravention of Ordinance.

25. Any person guilty of an offence under this Ordinance shall be liable upon conviction to a fine not exceeding fifty pounds or to imprisonment with or without hard labour for a period not exceeding six months or to both such fine and imprisonment.

Power to Lieutenant-Governor to make regulations and provide penalties for the breach thereof.

*26. It shall be lawful for the Lieutenant-Governor to make regulations and to prescribe the penalties for the breach thereof not exceeding the penalties in the last preceding section mentioned ;

(a) for the isolation examination and removal to asylums of persons affected or suspected of being affected with leprosy ;

† (b) as to the duties of superintendents, medical officers, visiting medical officers, and of guards, attendants, and other subordinate officers of asylums.

(c) for the classification treatment instruction and employment of persons detained in asylums ;

(d) as to the rations and clothing of persons detained in asylums ;

(e) as to the intercourse of persons detained in an asylum with each other and with persons not so detained and generally for the discipline and good order of persons so detained ;

(f) as to the setting apart of places within any asylum for the special confinement and punishment of persons convicted and sentenced by superintendents under section *twenty-one* of this Ordinance or of persons who have been convicted and sentenced for any offence by any competent court and removed to an asylum under this Ordinance ;

(g) prescribing forms to be used for the purposes of this Ordinance ;

(h) generally for the carrying out of the provisions of this Ordinance.

Examination and report of one medical practitioner to temporarily suffice where two not available.

27. Notwithstanding anything in this Ordinance contained the examination and report of one medical practitioner shall suffice for the purpose of an interim reception order under this Ordinance whenever undue delay or inconvenience would result in obtaining an examination and report by two medical practitioners ; provided always that the results of an examination

* For additional powers see Act No. 5 of 1907, sec. 3. For regulations under this sec. see Govt. Notice No. 1239 of 1909 (*Gazette*, 29/10/09).

† Sub-sec. (b) substituted by Act No. 2 of 1908, sec. 5.

and the report of one medical practitioner be confirmed by another medical practitioner as soon as the same can conveniently be obtained.

28. It shall be the duty of every police officer to execute any lawful order of the Colonial Secretary or magistrate issued under the provisions of this Ordinance and any person resisting or obstructing any magistrate medical practitioner or other person charged with a duty under this Ordinance in the execution of such duty shall be guilty of an offence.

Duty of police officer to execute orders made under Ordinance.

29. This Ordinance may be cited as the Leprosy Ordinance 1904 and shall come into operation on the first day of October, 1904.

Title and operation.

No. 24 of 1904.]

[Promulgated 29th July, 1904.]

ORDINANCE

TO PROVIDE FOR THE SETTLEMENT OF DIFFERENCES BY
ARBITRATION.

Assented to 28th July, 1904.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

PRELIMINARY.

Repeal of laws.

1. So much of any law as is repugnant to or inconsistent with the provisions of this Ordinance shall be and is hereby repealed.

Interpretation of terms.

2. In this Ordinance unless a contrary intention appears :

“ submission ” means a written agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not ;

“ court ” means the Supreme Court the Witwatersrand High Court and any circuit court hereafter established in this Colony ;

“ judge ” means a judge of the Supreme Court ;

“ official referee ” means a referee appointed by the court or a judge thereof ;

“ special referee ” means any particular person appointed to be a referee in any particular matter.

REFERENCES BY CONSENT OUT OF COURT.

Effect of a submission.

3. A submission unless a contrary intention is expressed therein shall be irrevocable except by leave of the court or a judge or by consent of all the parties thereto and shall have the same effect in all respects as if it had been made an order of court.

Submission to include provisions in Schedule.

4. A submission unless a contrary intention is expressed therein shall be deemed to include the provisions set forth in the Schedule to this Ordinance so far as they are applicable to the reference under the submission.

Official referee.

5. Where a submission provides that the reference shall be to an official referee any official referee to whom application is made shall subject to any order of court or a judge hear and determine the matters agreed to be referred.

Staying of legal proceedings.

6. If any party to a submission or any person claiming through or under him commences any legal proceedings in any court against any other party to the submission or any person claiming through or under him in respect of any matter agreed to be referred to arbitration any party to such legal proceedings may at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings apply to

that court to stay proceedings and that court or a judge thereof if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission and that the applicant was at the time when the proceedings were commenced and still remains ready and willing to do all things necessary to the proper conduct of the arbitration may make an order staying the proceedings.

7. Criminal matters so far as the prosecution or punishment thereof is concerned shall not be submitted to arbitration nor without special leave of the Court shall any of the following matters be submitted to arbitration namely:—

Provision excluding arbitration on certain matters.

- (a) matters relating to status ;
- (b) matrimonial causes ; or
- (c) matters in which minors or other persons under legal disability may be interested.

8. In any of the following cases :

In what cases written notice to appoint an arbitrator may be served.

- (a) where a submission provides that the reference shall be to a single arbitrator and all the parties do not after differences have arisen concur in the appointment of an arbitrator ;
- (b) if an appointed arbitrator fails or refuses to act or is incapable of acting or dies and the submission does not show that it was intended that the vacancy should not be supplied and the parties do not supply the vacancy ;
- (c) when the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him in any case where such appointment is requisite for the decision of the matters in dispute or the due conduct of the arbitration ;
- (d) when an appointed umpire or third arbitrator fails or refuses to act or is incapable of acting or dies and the submission does not show that it was intended that the vacancy should not be supplied and the parties or arbitrators do not supply the vacancy ;

any party may serve the other parties or the arbitrators as the case may be with a written notice to appoint or if agreement be necessary to agree in the appointment of an arbitrator or umpire or third arbitrator.

If the appointment is not made or agreed to as the case may be within seven clear days after the service of the notice the court or a judge may on application of the party who gave the notice and upon notice to the other party appoint an arbitrator umpire or third arbitrator who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

9. When a submission provides that a reference shall be to two arbitrators one to be appointed by each party then unless the submission expresses a contrary intention :

Supply of vacancy in case the submission provides for two arbitrators.

- (a) if either of the appointed arbitrators fails or refuses to act or is incapable of acting or dies the party who appointed him may appoint a new arbitrator in his place ;

(b) if on such reference one party fails to appoint an arbitrator either originally or by way of substitution as aforesaid for seven clear days after the other party having appointed his arbitrator has served the party making default with notice to make the appointment the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent; provided that the court or a judge may set aside any appointment made in pursuance of this section.

Arbitrators and umpires to be disinterested parties.

10. Every arbitrator and umpire must be and continue throughout the reference to be disinterested with reference to the matters referred and the parties to the reference and any party to a reference may require any arbitrator or umpire to make a sworn declaration before beginning or continuing his duties as such arbitrator or umpire that he has no interest direct or indirect in the matters referred or in the parties to the reference and knows of nothing disqualifying him from being impartial and disinterested in the discharge of such duties; provided always that any party may expressly waive any right to object to any arbitrator or umpire on the grounds of interest or the like.

Court may remove arbitrator or umpire.

11. The court may at any time upon motion remove any arbitrator or umpire against whom a just ground of recusation is found to exist or who has misconducted himself in connection with the matters referred to arbitration.

Powers of umpire or arbitrator.

12. The arbitrator or umpire acting under a submission shall unless the submission expresses a contrary intention have power:

(a) to administer oaths or to take the affirmations of the parties and witnesses appearing; and

(b) on the application of either party to appoint a commissioner to take the evidence of a person residing outside the Colony and forward the same to arbitrators in the same way as if he were a commissioner appointed by the court; and

(c) to state an award as to the whole or part thereof in the form of a special case for the opinion of the court; and

(d) to correct in any award any clerical mistake or error arising from any accidental slip or omission.

Party to submission may take out process of court for witnesses.

13. Any party to a submission may take out process of the court for the attendance of witnesses but no person shall be compelled under any such process to produce any document which he could not be compelled to produce on the trial of any action.

Time of making award.

14. The time for making an award may from time to time be enlarged by order of the court or a judge whether the time for making the award has expired or not.

Remission of case to arbitrator or umpire.

15. (1) In all cases of reference to arbitration the court or a judge may from time to time remit the matters referred or any of them to the reconsideration of the arbitrators or umpire.

(2) When a matter is remitted as aforesaid the arbitrators or umpire shall unless the order of remittal otherwise directs make their award within three months after the date of such order.

16. (1) Where an arbitrator or umpire has misconducted himself the court may remove him.

Misconduct of arbitrator or umpire.

(2) Where an arbitrator or umpire has misconducted himself or an arbitration or award has been improperly procured the court may set the award aside and may award costs against any such arbitrator or umpire personally.

17. An award which has been made a rule of court may be enforced in the same manner as a judgment or order to the same effect.

Award ; how to be enforced.

18. Where the submission does not provide in what place the arbitration shall be held the arbitrators or umpire may from time to time decide upon such place as may be reasonably accessible to the parties and convenient for the purposes of the reference.

Arbitrators or umpire may appoint place for arbitration if not already provided for.

REFERENCES UNDER ORDER OF COURT.

19. (1) Subject to rules of court the court or judge may refer any question arising in any cause or matter (other than a criminal proceeding) for inquiry or report to any official or special referee or officer of the court.

Official and special referees and officers of court.

(2) The report of an official or special referee or officer of the court may be adopted wholly or partially by the court or a judge and with or without such amendments as may to the court or judge seem meet and if so adopted may be enforced as a judgment or order to the same effect or the court or a judge may remit the report for further consideration or make such other order thereon as may be just.

20. In any cause or matter (other than a criminal proceeding) ;

(a) if all the parties interested who are not under disability consent ; or

(b) if the cause or matter requires any prolonged examination of documents or any scientific technical or local investigation which cannot in the opinion of a court or judge conveniently be conducted by the court through its ordinary officers ; or

(c) if the question in dispute consists wholly or in part of matters of account ;

Matters which may be referred to referees for trial.

the court or judge may at any time order the whole cause or matter or any question or issue of fact arising therein to be tried before an official or special referee or arbitrator agreed on by the parties or failing agreement before any official referee or officer of the court appointed by the court.

21. (1) In all cases of reference to an officer of the court or to an official or special referee or arbitrator under an order of court or a judge in any cause or matter the official or special referee or arbitrator shall be deemed to be an officer of the court and shall have such authority and shall conduct the reference in such manner as may be prescribed by rules of court and subject thereto as the court or a judge may direct.

Duty of referee and effect of his report or award.

(2) The report or award of any official or special referee or arbitrator or officer of the court on any such reference shall unless set aside by the court or a judge be equivalent to a finding of fact by the court.

(3) The remuneration to be paid to any official or special referee or arbitrator or officer of the court to whom any matter is referred by order of the court or a judge shall be determined by the court or a judge or by rules of court.

Award may be made a rule of court.

22. The report or award of any officer of the court or official or special referee or arbitrator may upon motion by any party after due notice to the other parties be made a judgment or order of the court.

Powers of court or judge as to references.

23. The court or a judge shall as to references under order of the court or a judge have all the powers which are by this Ordinance conferred on the court or a judge as to references by consent out of court.

GENERAL.

Subpœna or summons.

24. The issue of a subpœna or summons on a witness to compel his attendance and the production of things or documents before an arbitrator arbitrators umpire officer of the court and official or special referee as the case may be may be procured in the same way and subject to the same conditions as if the matter were an action pending in the court ;

(a) by any party to a submission or any arbitrator arbitrators or umpire thereunder ;

(b) by the parties to any reference under any order of court ;
or

(c) by any officer of the court official or special referee hearing any reference under order of court ;

provided always :

(1) that no person shall be compelled on such subpœna to produce any document or thing the production of which would not be compellable on trial of an action ;

(2) that the clerk of the court of any resident magistrate may issue such subpœna in the name and on behalf of the registrar of the court upon payment of the same fees as are chargeable for the issue of a subpœna in the magistrate's court.

General powers of court or judge.

25. The court or a judge may order the process of the court to issue to compel the attendance before a special or official referee or officer of the court or before an arbitrator or umpire of a witness wherever he may be within the jurisdiction of the court or may order any prisoner to be brought up for examination before such officer referee arbitrator or umpire.

Special case stated by umpire referee arbitrator or officer.
Costs.

26. Any such officer referee arbitrator or umpire may at any stage of the proceedings under a reference and shall if so directed by the court or a judge state in the form of a special case for the opinion of the court any question of law arising in the course of the reference.

27. Any order made under this Ordinance may be made on such terms as to costs or otherwise as the authority making the order thinks just.

False evidence.

28. Any person who wilfully or corruptly gives false evidence before any such officer referee arbitrator or umpire shall be guilty of perjury in the same way as if the evidence had been given in open court and may be dealt with prosecuted and punished accordingly.

29. This Ordinance shall not affect any arbitration pending at the date of the taking effect of this Ordinance but shall apply to any arbitration commenced after such date of this Ordinance under any agreement or order made before such date.

Ordinance
not to be
retroactive.

30. Nothing in this Ordinance shall apply to any arbitration under the Expropriation of Lands and Arbitration Clauses Proclamation 1902 unless all the parties to the arbitration shall otherwise agree in writing and then the said Proclamation and this Ordinance shall be read together.

Not to affect
arbitration
under
Expropriation
of Lands and
Arbitration
Clauses
Proclamation
1902 except
by consent.

31. This Ordinance may be cited as the Arbitration Ordinance 1904.

Title.

SCHEDULE.

PROVISIONS TO BE IMPLIED IN SUBMISSION.

(a) If no other mode of reference is provided the reference shall be to a single arbitrator.

(b) If the reference is to two arbitrators then for the decision of any question they must both agree but if to more than two then the decision of the majority of arbitrators shall determine all questions.

(c) If the reference is to two arbitrators the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award.

(d) The arbitrators shall make their award in writing within three months after entering on the reference or after having been called on to act by notice in writing from any party to the submission if the latter be the earlier date or on or before any later day to which the arbitrators by any writing signed by them may from time to time enlarge the time for making the award; provided that such further period shall not exceed four months.

(e) If the arbitrators have allowed their time or extended time to expire without making an award or have delivered to any party to the submission or to the umpire a notice in writing stating that they cannot agree the umpire may forthwith enter on the reference in lieu of the arbitrators.

(f) The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award provided that such further time shall not exceed three months.

(g) The parties to the reference and all persons claiming through them respectively shall subject to any legal objection submit to be examined by the arbitrators or umpire on oath or affirmation in relation to the matters in dispute and shall subject as aforesaid produce before the arbitrators or umpire all books deeds accounts papers writings and documents within their possession or power respectively which may be required or called for and to do all other things which during the proceedings on the reference the arbitrators or umpire may require.

(h) The witnesses on the reference shall if the arbitrators or umpire think fit be examined on oath or affirmation.

(i) The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

(j) The cost of the reference and award shall be in the discretion of the arbitrators or umpire who may direct to and by whom and in what manner those costs or any part thereof shall be paid and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be so paid as between solicitor and client; provided always that if no direction be given as to the scale on which such costs are to be taxed they shall be taxed on the tariff allowed in magistrates' courts from time to time if the award is such as a magistrate might have pronounced as a judgment in his court but otherwise such costs shall be taxed on the tariff in force from time to time in the Supreme Court.

(k) The oral evidence of witnesses shall be recorded by the arbitrator or arbitrators or umpire before whom it may be given in such manner as may be by him or them from time to time directed if not recorded by the arbitrator arbitrators or umpire themselves.

(l) The umpire shall be at liberty to act upon the evidence recorded before the arbitrators and to make his award without hearing any witnesses or receiving any fresh evidence; provided nevertheless that he shall be entitled if he so think fit to re-hear the witnesses or any of them or to call for further evidence.

(m) The umpire shall be at liberty to sit together with the arbitrators and to hear the evidence given from time to time and shall be entitled then and there to decide any interlocutory matter upon which the arbitrators disagree; provided however that the umpire shall not unless called upon to give an award or unless the parties have requested him so to sit be entitled to demand remuneration from the parties in respect of his attendance on the reference with the arbitrators.

(n) If the arbitrators where there is more than one or a majority of them cannot agree as to any matter of procedure or any interlocutory question they may refer such matter or question forthwith to the umpire for decision and he shall give his decision thereon forthwith.

(o) The arbitrator arbitrators or umpire shall be at liberty to proceed *ex parte* in case any party after reasonable notice shall at any time neglect or refuse to attend on the reference without having shown previously to them what they may consider good and sufficient cause for omitting to attend.

(p) If any party to the arbitration die the arbitration shall be stayed subject to any order that the court may make until the appointment of an executor or other proper representative of such deceased party and the time for making an award shall be extended for the same period as may elapse between the death of the party and the appointment of an executor or other proper representative and such executor or other proper representative shall when called upon by the other party or parties to the submission to proceed with the arbitration be subject to the same rules provisions and conditions as the deceased party.

No. 25 of 1904.]

[Promulgated 29th July, 1904.]

*ORDINANCE

TO PROVIDE FOR THE OCCUPATION OF FARMS LOTS AND ERVEN
IN THE DISTRICTS OF ZOUTPANSBERG WATERBERG AND
MIDDELBURG.

Assented to 28th July, 1904.

WHEREAS certain farms were allotted by the Government of the late South African Republic as occupation farms under the provisions of Law No. 8 of 1886 in the District of Zoutpansberg;

And whereas in pursuance of Volksraad Resolutions of 31st July 1883 article *nine hundred and eighty-two* and of 9th June 1888 article *four hundred and twenty-five* certain lots were allotted by the said Government subject to the provisions of the said Law No. 8 of 1886 with regard to occupation in the area known as "Mapoch's Gronden" in the District of Middelburg;

And whereas in pursuance of Volksraad Resolution of 12th May 1888 article *seventy-one* certain erven were allotted by the said Government in the town of Pietpotgietersrust in the District of Waterberg subject to the said provisions of the said Law No. 8 of 1886;

And whereas in pursuance of Executive Council Resolution of 3rd January 1899 article *one* certain erven were allotted by the said Government in the town of Louis Trichardt in the District of Zoutpansberg subject to the said provisions of the said law;

And whereas commissions have been appointed by the Lieutenant-Governor to inquire whether the provisions of the said law with regard to the occupation of the said farms lots and erven respectively have been complied with;

And whereas in certain cases deeds of grant have not been issued to the persons to whom the said farms lots and erven were allotted and it is necessary to provide for the issue of deeds of grant in such cases where the provisions of the said law have been complied with;

And whereas it is also necessary to provide for the occupation of such farms in future and for the issue of freehold titles in respect of such lots and erven;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

1. In this Ordinance if not inconsistent with the context;
- "Commissioner" shall mean the Commissioner of Lands;
- "occupation farm" shall mean a farm allotted under Law No. 8 of 1886;

Interpretation of terms.

* See Ord. No. 13 of 1905 and Act No. 31 of 1907. For Govt. Notices giving allotments, forfeitures of farms, etc., under this Ordinance see Chronological Table.

“occupation lot” shall mean land allotted in the area known as “Mapoch’s Gronden” in the District of Middelburg under Volksraad Resolutions of 31st July 1883 article *nine hundred and eighty-two* and of 9th June 1888 article *four hundred and twenty-five* subject to the provisions of Law No. 8 of 1886 with regard to occupation ;

“occupation erf” shall mean an erf allotted in the town of Pietpotgietersrust in the District of Waterberg under Volksraad Resolution of 12th May 1888 article *seventy-one* and also an erf allotted in the town of Louis Trichardt in the District of Zoutpansberg under Executive Council Resolution of 3rd January 1899 article *one* subject to the provisions of Law No. 8 of 1886 with regard to occupation.

Publication of lists of persons who have not received title-deeds.

2. The Commissioner shall cause to be published in the *Gazette* and in a newspaper circulating in the district in which the land is situated lists in the form of the First Schedule hereto of those persons who have not received title-deeds in respect to the occupation farms lots or erven allotted to them but who have substantially complied with the provisions of Law No. 8 of 1886 with regard to occupation. Such lists shall be published weekly for three consecutive weeks and a copy of such lists shall be served if possible personally on the persons whose names appear thereon.

Such persons may apply for deeds of grant.

3. Any person appearing on any such list shall be entitled on application to the Commissioner within twelve months of the last publication in the *Gazette* of such list to obtain a deed of grant in the form of the Second Third and Fourth Schedules as the case may be in respect to the occupation farm lot or erf allotted to him and to have the said farm lot or erf registered in his name ; provided

- (a) that in the case of a lot or erf or in the case of a farm which has been surveyed a confirmed diagram thereof which shall be prepared at his expense be filed ; and
- (b) all arrear taxes prescribed by law from the date on which the said farm lot or erf was allotted to him be paid ; and
- (c) the necessary registration or other fees be paid.

If any such person shall fail to apply for a deed of grant within the said period of twelve months it shall be lawful for the Commissioner by notice in the *Gazette* and in a newspaper circulating in the district in which such farm lot or erf is situated to call upon him to do so before the expiration of a further period of three months and should he fail to comply with such notice during such further period such farm lot or erf shall *ipso facto* be forfeited to the Crown.

Every occupation farm must be occupied by the owner or a substitute who must reside thereon for eight months every year.

*4. Every occupation farm shall be occupied by the owner personally or by a white male substitute above the age of eighteen years. Such owner or his substitute shall reside on such farm for at least eight months in each year ; provided that two or more owners of occupation farms which are contiguous to one another may apply to the Commissioner for permission to reside

* As amended by Act No. 31 of 1907, sec. 2.

together on one of such farms and during the period for which such permission may be granted residence by an owner on such farm shall be equivalent to residence on his own farm; and provided further that it shall be lawful for the Lieutenant-Governor in cases where it may appear to be necessary to suspend the provisions of this section with regard to residence on such conditions as he may deem fit.

5. On the sub-division of any occupation farm the provisions of this Ordinance with regard to occupation shall apply to each portion into which it shall be sub-divided; provided that where one farm and a portion of an adjoining farm or where two or more portions of the same farm or of adjoining farms are owned by the same person residence on any one piece of land so owned shall with the consent of the Commissioner be equivalent for the purposes of this Ordinance to residence on each piece of land owned as aforesaid.

Sub-division of occupation farms etc.

6. Upon application by the owner of any occupation farm the Commissioner if satisfied that such farm has been occupied in accordance with the provisions of this Ordinance * shall cause a certificate to that effect to be issued to such owner *† for a certificate that the conditions of occupation have been suspended.* No transfer or special mortgage of any occupation farm shall be registered by the Registrar of Deeds unless any such certificate bearing a date not more than four months prior to such transfer be exhibited to him.

No transfer to be registered unless certificate that provisions as to occupation have been complied with be produced.

7. It shall be lawful for the Commissioner to authorize in writing any fit and proper person to ascertain and report to him whether the provisions of this Ordinance * with regard to occupation are being complied with and for the purpose of making such report it shall be lawful for such person at all reasonable times to have free access to any occupation farm and to the buildings thereon and any person obstructing such person in the performance of his duty and any owner or substitute refusing or wilfully neglecting to answer any reasonable question put to him by such person or making any wilful misstatement to such person in the performance of his duty shall be liable to a fine not exceeding fifty pounds or in default of payment to imprisonment with or without hard labour for any period not exceeding three months.

Report by authorized person as to compliance with the provisions with regard to occupation.

8. (1) If from the report of the person referred to in the last preceding section it should appear to the Commissioner of Lands that reasonable grounds exist for the cancellation of the title to the farm the Land Board constituted under Ordinance No. 57 of 1903 shall call upon the registered owner by a summons in writing served personally if possible on him and where such service cannot be effected then by publishing it four times in the *Gazette* and in a newspaper circulating in the district to appear before it on a given date and at a given place either in person or by an agent appointed in writing by him to show cause why such title should not be cancelled. It shall be competent for the Land Board to hear the registered owner and his witnesses as

Cancellation of title for non-occupation.

† Words in italics inserted by Act No. 31 of 1907, sec. 3.

* As to meaning of "this Ordinance," see Act No. 31 of 1907, sec. 6.

well as such witnesses as may be called by the Commissioner and for such purposes it shall have and exercise the powers conferred by the Commissions' Powers Ordinance 1902.

(2) If the Land Board recommends to the Commissioner that the title should be cancelled and the Lieutenant-Governor approves such recommendation the Commissioner shall notify in four issues of the *Gazette* and in four issues of a newspaper circulating in the district the Lieutenant-Governor's intention to cancel such title.

(3) If within three months of the date of the first publication of such notice the registered owner does not commence proceedings against the Commissioner in the Supreme Court to restrain such cancellation as aforesaid the title to such land may be cancelled by the Lieutenant-Governor without the registered owner having any claim to compensation for improvements effected on the property.

(4) In any such proceeding as is mentioned in the last preceding sub-section the onus shall lie on the owner of proving that he has occupied the said farm in accordance with the provisions of this Ordinance.

(5) Upon the cancellation of any title to an occupation farm under this section all rights in and over the said farm by way of lease mortgage or otherwise shall *ipso facto* cease and determine.

Notice of
cancellation.

9. The Commissioner shall give notice in four consecutive issues of the *Gazette* and shall also inform the Registrar of Deeds in writing of the cancellation of the title of any farm under the last preceding section. The Registrar of Deeds shall thereupon cancel the entries in his register and the Deeds Office copy of the deed of grant or transfer whereby such farm is held as well as all leases mortgage bonds or other encumbrances registered against such title.

Exchange
of title.

10. The owner of any occupation lot or erf the title to which was issued prior to the taking effect of this Ordinance and which has not been cancelled shall on complying with section *three* hereof be entitled to exchange such title for a title under this Ordinance and shall on receipt of a title under this Ordinance deliver the old title to the Registrar of Deeds for cancellation.

Right to
conduct
water.

11. The holder of a title to any occupation farm lot or erf whether such title shall have been issued before or after the taking effect of this Ordinance may apply to the Commissioner for leave to construct keep in repair and maintain a channel or furrow through any other occupation farm lot or erf for the purpose of conducting water to his own farm lot or erf for domestic stock or irrigation purposes and the Commissioner may order the owner or owners of such farm lot or erf to allow such channel or furrow to be constructed subject to the payment of such compensation as may be mutually agreed upon by the parties concerned or failing such agreement as may be determined by arbitration in manner provided by the Expropriation of Lands and Arbitration Clauses Proclamation 1902.

12. Occupation farms and erven shall be subject to the same Taxes. taxes as quitrent (leenings) farms and ordinary town erven respectively and occupation lots shall be subject to an annual tax of fifteen shillings.

13. If at any time it is proved to the satisfaction of the Commissioner that the holder of a title to an occupation farm has made permanent improvements on such farm equal at least to the unimproved value thereof at the date of the taking effect of this Ordinance * the Commissioner shall cause to be issued to him a freehold title thereto in the form in the Fifth Schedule subject to his filing a confirmed diagram of such farm and subject to the payment of the land tax imposed by law on land held under such tenure; † *provided that nothing in this section or any amendment thereof contained shall prevent the Governor from issuing freehold title to any holder of an occupation farm on such terms and conditions as he may deem fit.* Exchange of title for freehold title

14. This Ordinance may be cited as the Occupation Farms Title. Ordinance 1904.

FIRST SCHEDULE.

Name of Person.	Name of Farm Lot or Erf.	Registered Number.	Locality Ward or Town.	District.	Date of Allotment.

SECOND SCHEDULE.

In the name and on behalf of His Majesty EDWARD THE SEVENTH by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King Defender of the Faith Emperor of India.

Whereas a certain farm or piece of land named..... situate in the district of..... has been allotted to..... by the Government of the late South African Republic by virtue of.....;

Now therefore I the Lieutenant-Governor of the Transvaal hereby grant cede and transfer unto the said..... the said farm or piece of land named..... containing..... morgen..... square rods and..... square feet and represented and described in the diagram hereunto annexed framed by Surveyor..... dated..... or according to Inspection Report as the case may be with full power and authority henceforth to possess the same in perpetuity.

This grant is made subject to the conditions of Ordinance No..... of 1904 known as the Occupation Farms Ordinance 1904 and further on the conditions that all roads already made over this land by lawful authority shall remain free

* As to meaning of "this Ordinance" see Act No. 31 of 1907, sec. 6.

† Words in italics added by Act No. 31 of 1907, sec. 4.

and unencumbered; that the land shall be subject to an outspan and to grazing for the cattle of travellers to be pointed out by the owner; that the said land shall be further subject to such stipulations as have been established or may hereafter be established by the Legislature; and finally that the owner shall be liable to the prompt payment of an annual tax of..... sterling.

Given under my Hand and the Public Seal of the Colony of the Transvaal at Pretoria this.....day of.....190.....

Lieutenant-Governor.

By His Excellency's Command.

Commissioner of Lands.

Registered in the Register of Farms, District.....
Book....., Folio....., on the.....day
of....., One thousand Nine hundred and.....

Registrar of Deeds.

THIRD SCHEDULE.

In the name and on behalf of His Majesty EDWARD THE SEVENTH by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King Defender of the Faith Emperor of India.

Whereas Lot No.....situate in "Mapoch's Gronden" in the District of Middelburg in this Colony has been granted to.....
by the Government of the late South African Republic under and by virtue of.....

Now therefore I the Lieutenant-Governor of the Transvaal hereby grant cede and transfer unto the said.....the aforesaid Lot No.....situate in "Mapoch's Gronden" in the District of Middelburg in this Colony containing.....morgen..... square roods and.....square feet and represented and described in the diagram hereunto attached framed by Surveyor..... dated.....with full power and authority henceforth to possess the same in perpetuity.

The owner of this lot shall be entitled to grazing for cattle under such conditions as shall hereafter be established by regulations on the unallotted or remaining extent of Mapoch's Gronden. This will not however prevent the Government from at any time disposing (in such a manner as it may see fit) of certain pieces of land suitable for town erven agricultural lands gardens and the building of houses and kraals. The said lot shall be further subject to all obligations and regulations which already exist or may later be established respecting lands granted on similar conditions; and finally the owner shall be liable to the prompt payment of an annual tax of fifteen shillings sterling.

Given under my Hand and the Public Seal of the Colony of the Transvaal at Pretoria this.....day of.....190.....

Lieutenant-Governor.

By His Excellency's Command.

Commissioner of Lands.

Registered in the Land Register of Mapoch's Gronden kept at Pretoria Book.....folio.....on the.....day of.....
One thousand Nine hundred and.....

Registrar of Deeds.

FOURTH SCHEDULE.

In the Name and on behalf of His Majesty EDWARD THE SEVENTH by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King Defender of the Faith Emperor of India.

Whereas Erf No..... situate in the town of.....in this Colony has been granted to.....by the Government of the late South African Republic under and by virtue of.....;

Now therefore I the Lieutenant-Governor of the Transvaal hereby grant
cede and transfer unto the said.....
the aforesaid Erf No..... situate in.....Street in the
town of.....containing.....
square roods and.....square feet and represented and described
in the diagram hereunto attached framed by Surveyor.....
dated.....with full power and authority henceforth to
possess the same in perpetuity.

This grant is made on the condition that the land shall be subject to all laws
obligations and regulations which already exist or may be hereafter established
with reference to land granted on similar conditions and situated within the
aforesaid town and that the owner shall be liable to the prompt payment of an
annual tax of.....sterling.

Given under my hand and the Public Seal of the Colony of the Transvaal
at Pretoria this.....day of.....190....

Lieutenant-Governor.

By His Excellency's Command.

Commissioner of Lands.

Registered in the Land Register of Erven kept at Pretoria Book.....
folio.....on the.....day of.....
One thousand Nine hundred and.....

Registrar of Deeds.

FIFTH SCHEDULE.

In the Name and on behalf of His Majesty EDWARD THE SEVENTH by the
Grace of God of the United Kingdom of Great Britain and Ireland and of
the British Dominions beyond the Seas King Defender of the Faith Emperor
of India.

Whereas a certain farm or piece of land named.....
situate in the District of.....has been
allotted to.....by the Govern-
ment of the late South African Republic by virtue of.....;

Now therefore I the Lieutenant-Governor of the Transvaal hereby grant
cede and transfer unto the said.....the
said farm or piece of land named.....
containing.....morgen.....square roods
and.....square feet and represented and described in the
diagram hereunto annexed framed by Surveyor.....
dated.....with full power and authority henceforth
to possess the same in perpetuity.

This grant is made on the conditions that all roads already made over this
land by lawful authority shall remain free and unencumbered; that the land
shall be subject to an outspan and to grazing for the cattle of travellers to be
pointed out by the owner; that the said land shall be further subject to such
stipulations as have been established or may hereafter be established by the
Legislature; and finally that the owner shall be liable to the prompt payment
of an annual tax of.....sterling.

Given under my hand and the Public Seal of the Colony of the Transvaal
at Pretoria this.....day of.....
190.....

Lieutenant-Governor.

By His Excellency's Command.

Commissioner of Lands.

Registered in the Register of Farms, District.....
Book.....Folio.....on the.....
day of.....One thousand Nine hundred and.....

Registrar of Deeds.

No. 26 of 1904.]

[Promulgated 29th July, 1904.

ORDINANCE

TO DECLARE THE LAW AS TO CERTAIN CRIMINAL OFFENCES.

Assented to 28th July, 1904.

WHEREAS it is desirable to more clearly define and declare the law as to certain criminal offences and the punishments which may be imposed for such offences :

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

PRELIMINARY.

- | | |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title and date of taking effect. | 1. This Ordinance may be cited as "The Crimes Ordinance 1904" and shall come into operation on the first day of October 1904. |
| Repeal. | 2. The laws mentioned in the First Schedule to this Ordinance shall be and are hereby repealed together with so much of any other law as may be repugnant to or inconsistent with the provisions of this Ordinance. |
| Interpretation of terms. | 3. In this Ordinance unless inconsistent with the context :
"break" shall mean the obtaining of entrance into or exit from any building by means of force threat fraud stealth or trick or by the unfastening or opening of any door or window or by the removal of any thing used to cover any opening into or within or from such building ;
"counterfeit coin" shall mean coin not current but resembling or apparently intended to resemble or pass for current coin and includes current coin prepared or altered so as to resemble or pass for coin of a higher denomination ;
"current coin" shall mean any coin used in any place as money and stamped by or under the authority of the Government of such place whether within or without His Majesty's Dominions in order that it may be so used ; coins issued by the Mint of the late South African Republic are current coin ;
"day time" shall mean the period between sunrise and sunset ;
"dwelling" shall mean a building or structure or any part thereof which is for the time being kept by the owner or occupier thereof for the residence therein of himself his family or servants or any of them and whether or not such building or structure be from time to time uninhabited ;
"enter" shall mean the insertion of any part of the body of a person or any part of an instrument used by such person within a building ; |

- “night” shall mean the period between sunset and sunrise ;
 “police officer” shall mean any officer constable or trooper of the Town Police or of the South African Constabulary or any member of any other police force lawfully established in this Colony ;
 “premises” shall mean any building or structure or part thereof (not being a dwelling) habitually used as a shop warehouse storehouse bank office school or for divine worship or any outbuilding occupied in connection with a dwelling or premises as herein defined ;
 “property” shall include everything capable of being the subject of ownership whether animate or inanimate movable or immovable corporeal or incorporeal ;
 “valuable security” shall include any document which is the property of any person and which is the evidence of the ownership of any property or of the right to recover receive or be in possession of any property.

CRIMES.

A.—*Housebreaking and like Offences.*

*4. Any person who shall break and enter any premises in the night with intent to commit an offence therein shall be liable upon conviction to imprisonment with hard labour for a period not exceeding seven years and if such person is a male to whipping not exceeding twelve strokes in addition to such imprisonment.

Breaking and entering premises other than a dwelling in the night with intent. Breaking and entering a dwelling in the night with intent.

*5. Any person who shall break and enter any dwelling in the night with intent to commit an offence therein shall be liable upon conviction to imprisonment with hard labour for a period not exceeding fourteen years and if such person is a male to whipping not exceeding twenty-four strokes in addition to such imprisonment.

Breaking and entering a dwelling in the night with intent.

*6. Any person who shall enter any dwelling or premises in the night with intent to commit an offence therein shall be liable upon conviction to imprisonment with hard labour for a period not exceeding five years and if such person is a male to whipping not exceeding nine strokes in addition to such imprisonment.

Entering dwelling or premises in the night with intent to commit an offence.

7. Any person who shall be found by night :

(a) armed with any dangerous or offensive weapon or instrument with intent to commit any offence mentioned in the preceding sections ; or

(b) having in his possession without lawful excuse (the proof of which excuse shall lie upon such person) any pick lock key crow jack jemmy or other implement of housebreaking ; or

(c) having his face stained or disguised or his person dressed or otherwise disguised with intent to commit any offence mentioned in the preceding sections ;

shall be liable upon conviction to the penalties mentioned in the last preceding section.

Being found by night armed or disguised or in possession of house-breaking implements with intent.

* As to framing of charge, see Act. No. 16 of 1908, sec. 9.

Breaking and entering premises or dwelling by day with intent to commit an offence.

Entering premises or dwelling on ground attached to same and refusing to depart on request.

Using threats after having broken or entered or unlawfully remained on premises.

Punishment after previous conviction for like offences.

*8. Any person who shall break and enter any premises or dwelling in the day time with intent therein to commit an offence shall be liable upon conviction to imprisonment with hard labour for a period not exceeding five years and if a male to whipping not exceeding twelve strokes in addition to such imprisonment.

9. Any person who shall enter upon any premises or dwelling or enclosed piece of land attached to or used in connection therewith and shall wrongfully and unlawfully remain therein or thereon after request by the occupier or person for the time being in charge thereof to immediately depart therefrom shall be liable upon conviction to imprisonment with or without hard labour for a period not exceeding six months.

10. Any person who having unlawfully broken into or entered upon or remained upon any premises or dwelling or enclosed piece of ground attached to or used in connection with such premises shall by any threat or conduct put any one therein or thereon in bodily fear shall upon conviction be liable to imprisonment with hard labour for a period not exceeding two years and if a male to whipping not exceeding nine strokes in addition to any penalty to which such person is liable under any law or under any of the preceding sections.

11. If any person shall be convicted of a contravention of any of the preceding sections of this Ordinance after a previous conviction for :

- (a) a contravention of any such section ;
- (b) a contravention of any provision of Law No. 5 of 1888 ;
- (c) the offence of housebreaking with intent to commit an offence ;

the maximum punishment prescribed by any such preceding section hereof may be increased as follows :—

- six months' imprisonment to imprisonment for one year ;
- two years' imprisonment to imprisonment for three years ;
- five years' imprisonment to imprisonment for seven years ;
- seven years' imprisonment to imprisonment for ten years ;
- fourteen years' imprisonment to imprisonment for twenty years ;

and if on such previous conviction a sentence of whipping was imposed a sentence of whipping of double the number of strokes (not exceeding twenty-four in all) may be imposed on the second or subsequent conviction.

B.—*Extortion.*

Compelling the execution of documents.

12. Any person who by unlawful violence or restraint of the person of another or by threat of violence and with intent to defraud or injure unlawfully compels any person to execute make accept endorse alter or destroy the whole or any part of any valuable security or to write impress or affix any name or seal upon any paper or parchment in order that it may be afterwards made or converted into or used or dealt with as a valuable

* As to framing of charge, see Act No. 16 of 1908, sec. 9.

security shall be liable on conviction to imprisonment with hard labour for a period not exceeding twenty years and if such person be a male to whipping not exceeding twenty-four strokes in addition to such imprisonment.

13. Any person who with threats of injury or by the display or pretended display of force demands any property capable of being stolen with intent to steal or obtain unlawful possession of such property shall be liable upon conviction to imprisonment with hard labour for a period not exceeding seven years and if such person be a male to whipping not exceeding twelve strokes.

Demanding property with threats and intent to steal.

14. Any person who knowing the contents thereof sends delivers or utters or directly or indirectly causes to be received any letter or writing demanding of any person with the use of threats and without reasonable or probable cause any property or thing whatsoever shall be liable upon conviction to imprisonment with hard labour for a period not exceeding fourteen years and if such person be a male to whipping not exceeding fifteen strokes.

Demanding property by letter using threats.

15. Any person who knowing the contents thereof shall send deliver or utter or directly or indirectly cause to be received any letter or writing accusing or threatening to accuse any person of any crime or offence with intent to obtain from any person whatever any property or money or other valuable thing shall be liable on conviction to the penalties mentioned in the last preceding section; and if such crime or offence aforesaid be

Sending letter threatening to accuse or accusing of a crime with intent to obtain money, etc.

(a) an offence punishable with death or any attempt to commit such offence;

(b) an unnatural offence or an assault with intent to commit rape or an indecent assault;

the penalty for the offence created by this section may be imprisonment with hard labour for twenty years and if such person be a male to whipping not exceeding twenty-four strokes.

16. It shall be immaterial in any charge or trial of any person for contravening sections *twelve thirteen fourteen or fifteen* of this Ordinance whether the threats in such section mentioned be of violence injury or accusation to be caused or made are to proceed from the accused or from any other person.

Immaterial from whom the violence or accusation to come.

17. Any person who publishes or directly or indirectly threatens to publish or directly or indirectly proposes to abstain from publishing or directly or indirectly offers to prevent the publication of any defamatory matter concerning any other person with intent to extort any property from such person or any third person or with intent to induce any person to give or confer or procure or to attempt to procure to upon or for any person any property or benefit of any kind shall be liable upon conviction to imprisonment with hard labour for a period not exceeding three years.

Publishing or threatening to publish defamatory matter with intent to extort money.

C.—Coining.

18. Any person who counterfeits or performs any part of the process of counterfeiting any current coin with intent to make any counterfeit coin pass for or resemble current coin shall be liable on conviction to imprisonment with hard labour for a period not exceeding fourteen years.

Counterfeiting current coin.

Importing
buying
selling and
dealing in
counterfeit
coin.

Exporting
counterfeit
coin.

Preparing
tools for
coining.

19. Any person who imports into this Colony or who buys sells receives or deals with or in any counterfeit coin which he knows to be or has good reason for believing to be counterfeit shall be liable on conviction to imprisonment with hard labour for a period not exceeding seven years.

20. Any person who without lawful authority or excuse (the proof of which shall lie upon him) exports any counterfeit coin resembling or apparently intended to resemble or pass for any current coin knowing the same to be counterfeit shall be liable upon conviction to imprisonment with hard labour for a period not exceeding two years.

21. Any person who without lawful authority or excuse (the proof of which shall lie upon him) makes mends or begins or proceeds to make or mend or buys sells or disposes of or has in his possession :

(1) any stamp or mould intended to make the resemblance of both or either of the sides of any current coin or any part thereof knowing the same to be intended as aforesaid ;

(2) any tool instrument or machine intended for marking coin round the edges with marks or figures apparently resembling those on the edges of any current coin knowing the same to be intended as aforesaid ; or

(3) any coinage press or any machine tool or instrument capable of preparing any material for receiving an impression resembling that on a current coin knowing such press machine tool or instrument to be intended to be used to counterfeit any current coin ;

shall be liable on conviction to imprisonment with hard labour for a period not exceeding fourteen years.

Preparing
metal for
coining
counterfeit
coin.

22. Any person who :

(1) gilds silvers or colours any piece of metal of a fit size or figure to be coined with intent that it shall be coined into counterfeit coin and used or passed as current coin ; or

(2) makes any piece of metal into a fit size or figure to facilitate the coining therefrom of any counterfeit coin with intent that it shall be used or passed as current coin ;

shall be liable upon conviction to imprisonment with hard labour for a period not exceeding fourteen years ; and any person who buys sells or shall be in possession of any such piece of metal in this section mentioned with such intent aforesaid shall be liable upon conviction to imprisonment with hard labour for a period not exceeding seven years.

Clipping or
sweating
coin.

23. Any person who files clips sweats or in any way diminishes or lightens any current coin with intent that when so dealt with it may be used or passed as current coin shall be liable upon conviction to imprisonment with hard labour for a period not exceeding fourteen years.

Uttering or
tendering
counterfeit
coin.

24. Any person who utters pays passes off tenders offers or otherwise uses as current coin any counterfeit coin which he knows to be counterfeit shall be liable upon conviction to imprisonment with hard labour for a period not exceeding seven years.

Possessing
counterfeit
coin.

25. Any person who has in his possession any counterfeit coin knowing it to be counterfeit and with intent to utter it

or to pay it or to pass it off or to tender it or to offer it or otherwise use it as current coin shall be liable upon conviction to imprisonment with hard labour for a period not exceeding seven years.

26. Any person who without lawful authority or excuse (the proof of which shall lie upon him) has in his possession or disposes of or in any way deals with any filings clippings gold or silver bullion or gold or silver in dust or in solution or in any other state obtained from any current coin knowing the same to have been so obtained shall be liable upon conviction to imprisonment with hard labour for a period not exceeding three years.

Possessing clippings of current coin.

27. Any person who with intent to defraud utters passes off tenders offers or otherwise uses as a current coin any medal or piece of metal which is not current coin knowing that it is not current coin shall be liable upon conviction to imprisonment with hard labour for a period not exceeding one year.

Passing medals as current coin.

28. Any person who without lawful authority or excuse (the proof of which shall lie upon him) defaces any current coin by stamping thereon any word letter device or mark shall be liable upon conviction to imprisonment with hard labour for a period not exceeding one year.

Defacing coins.

D.—Witchcraft.

29. Any person who imputes to another the use of non-natural means in causing any disease in any person or property or in causing injury to any person or property or shall name or indicate another as a wizard or witch shall be liable upon conviction to imprisonment with hard labour for a period not exceeding five years.

Imputations of witchcraft.

30. Any person who having named or indicated another as a wizard or witch shall be proved to be by habit or repute a witch doctor or witch finder shall be liable upon conviction to imprisonment for life.

Witch doctor naming another as a wizard or witch.

31. Any person who employs or solicits any witch doctor or witch finder to name or indicate another as a wizard or witch shall be liable upon conviction to imprisonment with hard labour for one year.

Employing a witch doctor.

32. Any person professing a knowledge of so-called witchcraft or the use of charms who shall advise any person applying to him how to bewitch or injure persons animals or other property or who shall supply any person with the pretended means of witchcraft shall be liable to imprisonment with hard labour for a period not exceeding ten years.

Witch doctor supplying advice for witchcraft with intent to injure.

33. Any person who on the advice of a witch doctor or of his pretended knowledge of so-called witchcraft shall with intent to injure use or cause to be put into operation such means or processes as he believes to be calculated to injure any person or property shall be liable upon conviction to imprisonment with hard labour for a period not exceeding ten years.

Persons using witch medicine with intent to injure.

34. Any person who for purposes of gain pretends to exercise or use any kind of supernatural power witchcraft sorcery enchantment or conjuration or undertakes to tell fortunes or pretends from his skill or knowledge in any occult science to discover where

Pretending to use supernatural power for purposes of gain.

or in what manner anything supposed to have been stolen or lost may be found shall be liable upon conviction to imprisonment with hard labour for a period not exceeding one year.

E.—Miscellaneous.

Penalty for assaulting or resisting or obstructing police officer in execution of his duty.

35. Any person who shall assault or shall resist or wilfully obstruct a police officer in the execution of his duty shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment of the same to imprisonment with or without hard labour for a period not exceeding three months or to be imprisoned without the option of a fine and with or without hard labour for a period not exceeding three months; and in case of a subsequent conviction for any such offence within the space of two years such person shall be liable to imprisonment with or without hard labour for a period not exceeding six months without the option of a fine.

Attempting or inciting to offences defined by this Ordinance.

36. Any person who attempts to commit or who incites to or attempts to procure the commission of any offence in this Ordinance defined shall be liable upon conviction to the punishment to which an offender convicted of such offence is liable under this Ordinance.

Attempting to commit statutory offences other than defined in this Ordinance.

37. Any person who attempts to commit any offence created or defined by statute other than this Ordinance for which attempt no punishment is expressly provided by such statute shall be liable upon conviction to the punishment to which an offender convicted of such offence is by such statute liable.

Power to magistrate to impose sentences of whipping on first conviction for certain offences.

38. Notwithstanding anything in section *thirty-five* of the Magistrate's Court Proclamation 1902 contained it shall be lawful for a court of a resident magistrate to impose a punishment of whipping not exceeding twenty-four strokes on any male offender in the case of a first conviction for any of the crimes and offences mentioned in the Second Schedule hereto whether such conviction be on summary trial by such court of resident magistrate or on remittal to such court under section *eighty-eight* of the Criminal Procedure Code 1903.

FIRST SCHEDULE.

Law No. 5 of 1888.
Proclamation No. 4 of 1901.
Proclamation (Transvaal) No. 15 of 1901.

SECOND SCHEDULE.

Assaults of an aggravated nature or with intent to do grievous bodily harm or with intent to commit any other offence.

Robbery.

Any statutory offence for which whipping may be imposed as a punishment unless it is expressly provided that whipping shall only be imposed as a punishment on a second or subsequent conviction.

No. 27 of 1904.]

[Promulgated 29th July, 1904.]

*ORDINANCE

FOR THE PREVENTION OF THE INTRODUCTION AND SPREAD OF
RABIES.

Assented to 28th July, 1904.

WHEREAS it is desirable to prevent the introduction into this Colony of the disease amongst dogs known as Rabies (in this Ordinance described as "the disease") and to make special provisions in the event of the outbreak of such disease for preventing the spread thereof;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

†1. It shall be lawful for the Lieutenant-Governor whenever it shall be reported to the Commissioner of Lands that the disease is prevalent in any adjoining Colony Protectorate or Territory and that there is reason to apprehend the introduction of it into this Colony or that the disease has broken out in this Colony to declare by Proclamation any magisterial district or portion thereof to be an area subject to regulations under this Ordinance and the Lieutenant-Governor may annex to such Proclamation regulations for any of the purposes hereinafter described and may from time to time by further Proclamation suspend alter or amend any such regulations in any district so proclaimed.

Power to Lieutenant-Governor to proclaim districts and make regulations.

2. The regulations made by virtue of the last preceding section may provide for all or any of the following matters:

Regulations; subject matter of.

- (a) the carrying out and enforcing of the said regulations by the members of the Town Police and the South African Constabulary or any other police force established by any law;
- (b) the powers and duties of resident and assistant resident magistrates and other officers entrusted with the carrying out of such regulations;
- (c) the control detention and custody of dogs;
- (d) the importation or entry of dogs into the Colony or the removal of dogs from one district thereof to another;
- (e) the notification of the disease;
- (f) the destruction of dogs affected or reasonably suspected of being affected with the disease or which have been in contact with other dogs so affected;
- (g) the disposal of the carcasses of dogs so destroyed;
- (h) generally for the prevention of the spread of the disease in this Colony;

* See Act No. 34 of 1907, sec. 6 (5).

† For regulations see Procs. (Admn.) Nos. 2 of 1906, 93 of 1907, and 1 of 1910 (magisterial districts declared areas).

and any such regulations may provide penalties for the breach thereof not exceeding the penalties mentioned in section †four of this Ordinance.

Exclusion of municipal bye-laws while regulations under Ordinance in force.

3. Whenever any such regulations shall be proclaimed as aforesaid for a magisterial district or portion thereof in which a municipality is situate any bye-laws of such municipality relating to the seizure sale and destruction of ownerless dogs shall *ipso facto* be suspended while such regulations are in force in such district or portion thereof but such regulations shall not affect any proceedings pending under the suspended bye-laws at the date of the said Proclamation or be deemed to suspend any by-law for the licensing of dogs by the council of the municipality.

Interpretation of terms.

4. The word "dog" for the purposes of this Ordinance shall include any dog bitch puppy or other canine animal ; but it shall be lawful for the Lieutenant-Governor by Proclamation in the *Gazette* to apply the provisions of this Ordinance or any of the regulations made thereunder to any other animal liable to the disease.

Title.

5. This Ordinance may be cited for all purposes as the Rabies Ordinance 1904.

† Sec. 4 of the Draft Ordinance introduced created an offence and provided penalties for its breach. In the Committee stage of the Draft, sec. 4 was deleted, but no corresponding correction was made in the proviso to sec. 2.

No. 28 of 1904.]

[Promulgated 29th July, 1904.]

ORDINANCE

TO VALIDATE THE ACTS OF LOCAL AUTHORITIES AND OF OTHER
PERSONS COMMITTED IN EXCESS OF THEIR LEGAL POWERS.

Assented to 28th July, 1904.

WHEREAS certain local authorities in the belief that certain by-laws made by them severally under the provisions of the Municipal Corporations Ordinance 1903 had been duly published in accordance with the requirements of the said Ordinance have done certain acts under such by-laws and have instituted prosecutions and recovered penalties from divers persons for contraventions of such by-laws ;

And whereas by virtue of a decision of the Supreme Court of this Colony it has been made to appear that the said by-laws were not duly published in accordance with the requirements of the said Ordinance ;

And whereas it is desirable to validate the acts done by such local authorities and by other persons under the said by-laws ;

And whereas a body of persons known and in this Ordinance described as the "Rand Plague Committee" was constituted and empowered under various Government Notices to carry out in the Witwatersrand District of the Colony certain regulations made by the Colonial Secretary under section *fifty-eight* of the said Ordinance for the purpose of checking the progress of the disease known as bubonic plague ;

And whereas doubts have arisen as to the legality of the acts done or authorized to be done under the said regulations by the Rand Plague Committee and other persons by its authority and direction and it is desirable to validate such acts and further to make provision for the payment of the expenditure incurred by the said committee in carrying out the said regulations :

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

PART I.

1. The publication in the *Gazette* of the Government Notices mentioned in the first column of the First Schedule hereto shall be deemed to have been due publication in accordance with the requirements of section *forty-five* of the Municipal Corporations Ordinance 1903 of the bye-laws mentioned in the second column of the said Schedule for each of the districts of local authorities set forth in the third column of the said Schedule and to the extent to which they purported to have been published respectively for such districts and from and after the date of such purported publication.

Certain scheduled notices to be deemed to have been due publication of bye-laws.

No action to lie against local authority or persons for anything done in exercise of bye-laws not duly published.

2. No action shall lie against any such local authority aforesaid or any other person for any damages alleged to have been caused by the exercise by any such local authority or by such other person of the powers and duties conferred and imposed by the said bye-laws or for the recovery of any moneys paid into the revenue of any such local authority under the said bye-laws or for the recovery of any moneys paid as and for a penalty for contravening any such bye-law and all sentences of fine or imprisonment imposed by any court for a contravention of any such bye-law shall be deemed to have been validly imposed.

PART II.

Validation of acts of Rand Plague Committee.

3. All acts done by the Rand Plague Committee constituted by and in the regulations published under Government Notice No. 420 of 1904 or any addition to or amendment of such regulations and all acts done in good faith by any persons under the authority of such committee in the exercise of the powers which any such regulations purported to have conferred upon it or them shall be deemed to have been lawfully done ; and no action shall lie against any member of such committee or officer thereof or any person acting under the authority or direction of such committee or of a member or officer thereof by reason of the bona fide exercise of the powers conferred by the said regulations and all sentences whether of fine or imprisonment imposed by any court for contraventions of the said regulations shall be deemed to have been validly imposed. Such regulations as are referred to in this section were published under the several Government Notices mentioned in the Second Schedule hereto and every such regulation shall be deemed to have had the force of law throughout every part of the Witwatersrand District as and from the date on which it was published in the *Gazette*.

Payment of expenditure incurred by Rand Plague Committee.

4. The expenditure incurred by the Rand Plague Committee and any officer thereof in the exercise of the powers conferred by the said regulations shall be paid in the following manner that is to say : one-half such expenditure shall be borne out of the public revenue of the Colony and one-half such expenditure shall be borne by the local authorities mentioned in the Third Schedule hereto in certain proportions to be determined as hereinafter provided.

Mode in which proportions of share of expenditure borne by local authorities to be determined.

5. (1) The proportions in which the half share of expenditure which under the last preceding section is to be borne by the said local authorities shall be determined by a qualified accountant after an examination of the accounts of the Rand Plague Committee.

(2) The appointment of such qualified accountant aforesaid shall be made by all the local authorities mentioned in the Third Schedule hereto ; provided that if each and every such local authority shall not agree upon the appointment of such qualified accountant within three months from the date of any notice or proclamation declaring the Rand Plague Committee to be abolished notice shall be given by the secretary of the Rand Plague Committee to the Colonial Secretary who thereupon shall appoint a qualified accountant for the purposes of sub-section (1) of this section.

(3) The qualified accountant appointed as afore-said shall as soon as may be after the date of his appointment prepare and submit to each of the said local authorities a statement showing the amounts which from the said examination of accounts appear to be due from each such local authority and showing also the basis of calculation of such amounts; and if within one month of the submission of the said statement to any such local authority such local authority shall give notice to the said qualified accountant that it objects to the terms of the said statement the said qualified accountant shall on a day to be appointed by him hear any such objection and may after such hearing either amend the said statement or confirm the same and the statement as amended or as confirmed shall be final and conclusive as between the said local authorities as determining the amounts respectively payable by them. For the purposes of the hearing of objections to the said statement the provisions of the Commissions Powers Ordinance 1902 shall *mutatis mutandis* apply as if the said qualified accountant were a commission to which such Ordinance had been applied.

(4) Such qualified accountant is hereby authorized (if necessary) to recover from any such local authority in any competent court the amount determined to be payable as aforesaid by it.

(5) The amounts so determined to be respectively payable by such local authorities shall be paid out of the several revenues of such local authorities.

(6) The remuneration of the qualified accountant appointed under this section shall be deemed to be expenditure incurred by the Rand Plague Committee.

6. This Ordinance may be cited as the Local Authorities and Plague Committee Validation Ordinance 1904. Title.

FIRST SCHEDULE.

Government Notices purporting to publish Bye-laws.	Subject of Bye-laws.	District of Local Authority for which Bye-laws purported to have been published.
No. 1498 of 1903	Trade Licences	Boksburg.
No. 93 of 1904	"	"
No. 1498 of 1903	"	Potchefstroom.
No. 93 of 1904	"	"
No. 1498 of 1903	"	Heidelberg.
No. 105 of 1904	"	"
No. 1498 of 1903	"	Klerksdorp.
No. 107 of 1904	"	"
No. 58 of 1904	"	Lydenburg.
No. 123 of 1904	"	"
No. 58 of 1904	"	Piet Retief.
No. 148 of 1904	"	"
No. 58 of 1904	"	Amersfoort.
No. 155 of 1904	"	"
No. 1498 of 1903	"	Pietersburg.
No. 161 of 1904	"	"
No. 58 of 1904	"	Volksrust.
No. 163 of 1904	"	"

*Local Authorities and
Plague Committee Validation.* [Ord. No. 28.]

A.D. 1904.]

Government Notices purporting to publish Bye-laws.	Subject of Bye-laws.	District of Local Authority for which Bye-laws purported to have been published.
No. 58 of 1904	Trade Licences	Rustenburg
No. 213 of 1904	"	"
No. 58 of 1904	"	Machadodorp.
No. 244 of 1904	"	"
No. 58 of 1904	"	Vereeniging.
No. 248 of 1904	"	"
No. 58 of 1904	"	Wakkerstroom.
No. 285 of 1904	"	"
No. 58 of 1904	"	Bethal
No. 289 of 1904	"	"
No. 58 of 1904	"	Wolmaransstad.
No. 362 of 1904	"	"
No. 58 of 1904	"	Amsterdam.
No. 481 of 1904	"	"
No. 58 of 1904	"	Belfast.
No. 581 of 1904	"	"
No. 279 of 1904	Dog Licences	Machadodorp.
No. 288 of 1904	"	"
No. 279 of 1904	"	Amersfoort.
No. 306 of 1904	"	"
No. 279 of 1904	"	Wolmaransstad.
No. 312 of 1904	"	"
No. 279 of 1904	"	Zeerust.
No. 315 of 1904	"	"
No. 279 of 1904	"	Rodepoort-Marais- burg.
No. 333 of 1904	"	"
No. 279 of 1904	"	Vereeniging. "
No. 334 of 1904	"	"
No. 279 of 1904	"	Bethal.
No. 350 of 1904	"	"
No. 279 of 1904	"	Ermelo.
No. 351 of 1904	"	"
No. 279 of 1904	"	Nylstroom.
No. 355 of 1904	"	"
No. 279 of 1904	"	Heidelberg.
No. 360 of 1904	"	"
No. 279 of 1904	"	Potchefstroom.
No. 375 of 1904	"	"
No. 279 of 1904	"	Ventersdorp.
No. 377 of 1904	"	"
No. 279 of 1904	"	Boksburg
No. 381 of 1904	"	"
No. 279 of 1904	"	Germiston.
No. 392 of 1904	"	"
No. 279 of 1904	"	Wakkerstroom.
No. 396 of 1904	"	"
No. 279 of 1904	"	Carolina.
No. 419 of 1904	"	"
No. 279 of 1904	"	Heidelberg.
No. 422 of 1904	"	"
No. 279 of 1904	"	Pietersburg.
No. 432 of 1904	"	"
No. 279 of 1904	"	Belfast.
No. 458 of 1904	"	"
No. 279 of 1904	"	Krugersdorp.
No. 467 of 1904	"	"
No. 279 of 1904	"	Amsterdam.
No. 483 of 1904	"	"

Government Notices purporting to publish Bye-laws.	Subject of Bye-laws.	District of Local Authority for which Bye-laws purported to have been published.
No. 279 of 1904	Dog Licences	Klerksdorp.
No. 501 of 1904	"	"
No. 279 of 1904	"	Potchefstroom.
No. 510 of 1904	"	"
No. 279 of 1904	"	Springs.
No. 546 of 1904	"	"
No. 279 of 1904	"	Rustenburg.
No. 572 of 1904	"	"
No. 279 of 1904	"	Standerton.
No. 597 of 1904	"	"
No. 279 of 1904	"	Piet Retief.
No. 599 of 1904	"	"
No. 279 of 1904	"	Lydenburg.
No. 600 of 1904	"	"
No. 192 of 1904	Public Health	Standerton.
No. 207 of 1904	"	"
No. 192 of 1904	"	Pietersburg.
No. 208 of 1904	"	"
No. 192 of 1904	"	Roodepoort-Maraisburg.
No. 246 of 1904	"	"
No. 192 of 1904	"	Boksburg. "
No. 259 of 1904	"	"
No. 192 of 1904	"	Heidelberg.
No. 274 of 1904	"	"
No. 192 of 1904	"	Volksrust.
No. 291 of 1904	"	"
No. 192 of 1904	"	Roodepoort-Maraisburg.
No. 310 of 1904	"	"
No. 192 of 1904	"	Krugersdorp. "
No. 363 of 1904	"	"
No. 192 of 1904	"	Germiston.
No. 388 of 1904	"	"
No. 192 of 1904	"	Klerksdorp.
No. 403 of 1904	"	"
No. 192 of 1904	"	Potchefstroom.
No. 415 of 1904	"	"
No. 275 of 1904	"	Zeerust.
No. 433 of 1904	"	"
No. 192 of 1904	"	Potchefstroom.
No. 440 of 1904	"	"
No. 192 of 1904	"	Middelburg.
No. 457 of 1904	"	"
No. 275 of 1904	"	Amersfoort.
No. 424 of 1904	"	"
No. 432 of 1904	"	"
No. 275 of 1904	"	Nylstroom.
No. 424 of 1904	"	"
No. 484 of 1904	"	"
No. 275 of 1904	"	Bethal
No. 492 of 1904	"	"
No. 275 of 1904	"	Machadodorp
No. 544 of 1904	"	"
No. 410 of 1904	"	Boksburg.
No. 556 of 1904	"	"
No. 275 of 1904	"	Springs.
No. 424 of 1904	"	"
No. 568 of 1904	"	"

Government Notices purporting to publish Bye-laws.	Subject of Bye-laws.	District of Local Authority for which Bye-laws purported to have been published.
No. 192 of 1904	Public Health	Germiston.
No. 571 of 1904	"	"
No. 275 of 1904	"	Ermelo.
No. 424 of 1904	"	"
No. 595 of 1904	"	"
No. 457 of 1904	"	Middelburg.
No. 608 of 1904	"	"
No. 275 of 1904	"	Piet Retief.
No. 424 of 1904	"	"
No. 609 of 1904	"	"
No. 192 of 1904	"	Vereeniging.
No. 612 of 1904	"	"
No. 411 of 1904	"	Standerton.
No. 616 of 1904	"	"
No. 275 of 1904	"	Springs.
No. 424 of 1904	"	"
No. 618 of 1904	"	"
No. 411 of 1904	"	Krugersdorp.
No. 619 of 1904	"	"
No. 411 of 1904	"	Heidelberg.
No. 620 of 1904	"	"
No. 275 of 1904	"	Belfast.
No. 424 of 1904	"	"
No. 623 of 1904	"	"
No. 281 of 1904	Building	Pietersburg.
No. 382 of 1904	"	"
No. 281 of 1904	"	Heidelberg.
No. 443 of 1904	"	"
No. 281 of 1904	"	Boksburg.
No. 512 of 1904	"	"
No. 281 of 1904	"	Nylstroom.
No. 548 of 1904	"	"
No. 281 of 1904	"	Roodepoort-Maraishurg.
No. 611 of 1904	"	"
No. 150 of 1904	Pounds	Krugersdorp. "
No. 197 of 1904	"	"
No. 150 of 1904	"	Carolina.
No. 211 of 1904	"	"
(Cancelled by No. 606 of 1904.)		
No. 150 of 1904	"	Amersfoort.
No. 212 of 1904	"	"
No. 150 of 1904	"	Ventersdorp.
No. 216 of 1904	"	"
No. 150 of 1904	"	Machadodorp.
No. 242 of 1904	"	"
No. 150 of 1904	"	Roodepoort-Maraishurg.
No. 245 of 1904	"	"
No. 150 of 1904	"	Nylstroom. "
No. 251 of 1904	"	"
No. 150 of 1904	"	Belfast.
No. 261 of 1904	"	"
No. 150 of 1904	"	Heidelberg.
No. 272 of 1904	"	"
No. 150 of 1904	"	Lydenburg
No. 307 of 1904	"	"
No. 150 of 1904	"	Zeerust.

Government Notices purporting to publish Bye-laws.	Subject of Bye-laws.	District of Local Authority for which Bye-laws purported to have been published.
No. 308 of 1904	Pounds	Zeerust.
No. 150 of 1904	"	Wolmaransstad
No. 311 of 1904	"	"
No. 150 of 1904	"	Ermelo.
No. 353 of 1904	"	"
No. 150 of 1904	"	Middelburg.
No. 358 of 1904	"	"
No. 150 of 1904	"	Germiston.
No. 391 of 1904	"	"
No. 150 of 1904	"	Potchefstroom.
No. 414 of 1904	"	"
No. 150 of 1904	"	Vereeniging.
No. 426 of 1904	"	"
No. 150 of 1904	"	Bethal.
No. 434 of 1904	"	"
No. 150 of 1904	"	Boksburg.
No. 435 of 1904	"	"
No. 216 of 1904	"	Ventersdorp.
No. 514 of 1904	"	"
No. 150 of 1904	"	Wakkerstroom.
No. 537 of 1904	"	"
No. 150 of 1904	"	Springs
No. 547 of 1904	"	"
No. 358 of 1904	"	Middelburg.
No. 559 of 1904	"	"
No. 150 of 1904	"	Carolina
No. 570 of 1904	"	"
No. 514 of 1904	"	Ventersdorp.
No. 610 of 1904	"	"
No. 12 of 1904	Standing Orders	Standerton.
No. 34 of 1904	"	"
No. 12 of 1904	"	Middelburg.
No. 64 of 1904	"	"
No. 12 of 1904	"	Heidelberg.
No. 103 of 1904	"	"
No. 12 of 1904	"	Zeerust.
No. 124 of 1904	"	"
No. 12 of 1904	"	Volksrust.
No. 145 of 1904	"	"
No. 12 of 1904	"	Germiston.
No. 152 of 1904	"	"
No. 12 of 1904	"	Klerksdorp.
No. 153 of 1904	"	"
No. 12 of 1904	"	Amersfoort.
No. 156 of 1904	"	"
No. 12 of 1904	"	Pietersburg.
No. 160 of 1904	"	"
No. 12 of 1904	"	Springs.
No. 189 of 1904	"	"
No. 12 of 1904	"	Wakkerstroom.
No. 210 of 1904	"	"
No. 12 of 1904	"	Ermelo.
No. 239 of 1904	"	"
No. 12 of 1904	"	Vereeniging.
No. 247 of 1904	"	"
No. 12 of 1904	"	Lydenburg
No. 253 of 1904	"	"
No. 12 of 1904	"	Roodepoort-Marais- burg.

Government Notices purporting to publish Bye-laws.	Subject of Bye-laws.	District of Local Authority for which Bye-laws purported to have been published.
No. 270 of 1904	Standing Orders	Roodepoort-Marais- burg.
No. 12 of 1904	"	Wolmaransstad.
No. 309 of 1904	"	"
No. 12 of 1904	"	Nylstroom.
No. 332 of 1904	"	"
No. 12 of 1904	"	Belfast.
No. 354 of 1904	"	"
No. 12 of 1904	"	Potchefstroom.
No. 366 of 1904	"	"
No. 12 of 1904	"	Carolina.
No. 378 of 1904	"	"
No. 12 of 1904	"	Rustenburg.
No. 486 of 1904	"	"
No. 12 of 1904	"	Bethal.
No. 494 of 1904	"	"
No. 12 of 1904	"	Piet Retief.
No. 593 of 1904	"	"
No. 12 of 1904	"	Barberton.
No. 613 of 1904	"	"
No. 151 of 1904	Native Pass Regulations	Pietersburg.
No. 151 of 1904	"	Standerton.
No. 151 of 1904	"	Volkstrust.
No. 151 of 1904	"	Zeerust.
No. 209 of 1904	"	Amersfoort.
No. 151 of 1904	"	"
No. 217 of 1904	"	Ventersdorp.
No. 151 of 1904	"	"
No. 227 of 1904	"	Pietersburg
No. 151 of 1904	"	"
No. 237 of 1904	"	Christiana.
No. 151 of 1904	"	"
No. 241 of 1904	"	Machadodorp.
No. 151 of 1904	"	"
No. 250 of 1904	"	Nylstroom.
No. 151 of 1904	"	"
No. 254 of 1904	"	Lydenburg.
No. 151 of 1904	"	"
No. 268 of 1904	"	Potchefstroom.
No. 151 of 1904	"	"
No. 286 of 1904	"	Belfast.
No. 151 of 1904	"	"
No. 314 of 1904	"	Wolmaransstad.
No. 151 of 1904	"	"
No. 357 of 1904	"	Middelburg.
No. 151 of 1904	"	"
No. 418 of 1904	"	Wakkerstroom.
No. 151 of 1904	"	"
No. 442 of 1904	"	Rustenburg.
No. 151 of 1904	"	"
No. 480 of 1904	"	Amsterdam.
No. 151 of 1904	"	"
No. 523 of 1904	"	Carolina
No. 151 of 1904	"	"
No. 540 of 1904	"	Bethal.
No. 151 of 1904	"	"
No. 569 of 1904	"	Schweizer Reneke.
No. 151 of 1904	"	"
	"	Piet Retief. "

Government Notices purporting to publish Bye-laws.	Subject of Bye-laws.	District of Local Authority for which Bye-laws purported to have been published.
No. 596 of 1904	Native Pass Regulations	Piet Retief.
No. 322 of 1904	Traffic	Germiston.
No. 393 of 1904	"	"
No. 322 of 1904	"	Zeerust.
No. 431 of 1904	"	"
No. 322 of 1904	"	Amersfoort.
No. 459 of 1904	"	"
No. 322 of 1904	"	Belfast.
No. 460 of 1904	"	"
No. 322 of 1904	"	Boksburg.
No. 497 of 1904	"	"
No. 322 of 1904	"	Wolmaransstad.
No. 516 of 1904	"	"
No. 322 of 1904	"	Volksrust.
No. 519 of 1904	"	"
No. 322 of 1904	"	Heidelberg.
No. 522 of 1904	"	"
No. 322 of 1904	"	Piet Retief.
No. 539 of 1904	"	"
No. 322 of 1904	"	Nylstroom.
No. 549 of 1904	"	"
No. 497 of 1904	"	Boksburg.
No. 560 of 1904	"	"
No. 322 of 1904	"	Standerton
No. 584 of 1904	"	"
No. 322 of 1904	"	Klerksdorp.
No. 592 of 1904	"	"
No. 322 of 1904	"	Roodepoort-Maraisburg.
No. 617 of 1904	"	"
No. 293 of 1904	Places of Public Amusement	Heidelberg.
No. 441 of 1904	"	"
No. 495 of 1904	"	Johannesburg.
No. 499 of 1904	"	"
No. 293 of 1904	"	Volksrust.
No. 541 of 1904	"	"
No. 293 of 1904	"	Pietersburg.
No. 558 of 1904	"	"
No. 293 of 1904	"	Boksburg.
No. 566 of 1904	"	"
No. 293 of 1904	"	Standerton.
No. 614 of 1904	"	"
No. 495 of 1904	"	Heidelberg.
No. 622 of 1904	"	"
No. 202 of 1904	Market Regulations	Ventersdorp.
No. 218 of 1904	"	"
No. 202 of 1904	"	Pietersburg.
No. 226 of 1904	"	"
No. 202 of 1904	"	Christiana.
No. 238 of 1904	"	"
No. 202 of 1904	"	Zeerust.
No. 240 of 1904	"	"
No. 202 of 1904	"	Machadodorp.
No. 243 of 1904	"	"
No. 202 of 1904	"	Nylstroom.
No. 249 of 1904	"	"
No. 202 of 1904	"	Roodepoort-Maraisburg.

Government Notices purporting to publish Bye-laws.	Subject of Bye-laws.	District of Local Authority for which Bye-laws purported to have been published.
No. 252 of 1904	Market Regulations ..	Roodepoort-Marais- burg.
No. 202 of 1904	Heidelberg.
No. 273 of 1904
No. 202 of 1904	Belfast.
No. 287 of 1904
No. 202 of 1904	Volksrust.
No. 290 of 1904
No. 202 of 1904	Boksburg.
No. 292 of 1904
No. 202 of 1904	Wolmaransstad.
No. 313 of 1904
No. 202 of 1904	Ermelo.
No. 352 of 1904
No. 202 of 1904	Middelburg.
No. 359 of 1904
No. 202 of 1904	Standerton.
No. 367 of 1904
No. 202 of 1904	Potchefstroom.
No. 376 of 1904
No. 202 of 1904	Wakkerstroom.
No. 395 of 1904
No. 202 of 1904	Carolina.
No. 402 of 1904
No. 202 of 1904	Vereeniging.
No. 425 of 1904
No. 202 of 1904	Krugersdorp.
No. 472 of 1904
No. 202 of 1904	Rustenburg.
No. 487 of 1904
No. 202 of 1904	Klerksdorp.
No. 591 of 1904
No. 202 of 1904	Lydenburg.
No. 598 of 1904
No. 1091 of 1903	Kaffir Eating-houses ..	Krugersdorp.
No. 135 of 1904
No. 1091 of 1903	Roodepoort-Marais- burg.
No. 269 of 1904
No. 321 of 1904	Heidelberg.
No. 513 of 1904
No. 321 of 1904	Volksrust.
No. 538 of 1904
No. 321 of 1904	Boksburg.
No. 555 of 1904
No. 321 of 1904	Pietersburg.
No. 557 of 1904
No. 321 of 1904	Standerton.
No. 615 of 1904
No. 321 of 1904	Washing	Heidelberg.
No. 513 of 1904
No. 321 of 1904	Volksrust.
No. 538 of 1904
No. 321 of 1904	Boksburg.
No. 555 of 1904
No. 321 of 1904	Pietersburg.
No. 557 of 1904
No. 321 of 1904	Standerton.
No. 615 of 1904

Government Notices purporting to publish Bye-laws.	Subject of Bye-laws.	District of Local Authority for which Bye-laws purported to have been published.
No. 320 of 1904	Fire	Volksrust.
No. 493 of 1904	"	"
No. 320 of 1904	"	Heidelberg.
No. 511 of 1904	"	"
No. 389 of 1904	Gambling in Streets ..	"
No. 621 of 1904	"	"

SECOND SCHEDULE.

Government Notices publishing Plague Regulations and constituting Rand Plague Committee :—

- No. 420 of 1904.
- No. 421 of 1904.
- No. 465 of 1904.
- No. 507 of 1904.
- No. 534 of 1904.
- No. 578 of 1904.
- No. 672 of 1904.

THIRD SCHEDULE.

Names of local authorities contributory to expenses of Rand Plague Committee :—

- Johannesburg Municipality.
- Boksburg Municipality.
- Springs Urban District Board.
- Roodepoort-Maraisburg Urban District Board.
- Krugersdorp Municipality.
- Germiston Municipality.

No. 29 of 1904.]

[Promulgated 12th August, 1904.]

***ORDINANCE**

TO MAKE PROVISION FOR THE REGISTRATION OF MEDICAL PRACTITIONERS DENTISTS CHEMISTS AND DRUGGISTS MIDWIVES AND NURSES AND FOR THE BETTER REGULATION OF MEDICAL PRACTICE AND THE SALE AND DISPENSING OF DRUGS MEDICINES AND POISONS.

Assented to 10th August, 1904.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

PART I.**PRELIMINARY.**

- | | |
|--------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Title. | 1. This Ordinance may be cited as the Medical Dental and Pharmacy Ordinance 1904. |
| When Ordinance to take effect. | †2. This Ordinance shall take effect on such day as the Lieutenant-Governor shall appoint by Proclamation in the <i>Gazette</i> but the <i>eighth</i> section hereof shall take effect forthwith after the passing of this Ordinance. |
| Interpretation of terms. | 3. In this Ordinance unless inconsistent with the context :—
“medical practitioner” shall mean every person lawfully entitled to practise in this Colony as a physician surgeon and accoucheur on the day before the taking effect of this Ordinance and also every person duly qualified by registration under this Ordinance to practise as a physician surgeon and accoucheur within this Colony ;
“chemist and druggist” shall mean every person lawfully entitled to practise as a chemist and druggist in this Colony on the day before the taking effect of this Ordinance and also every person duly registered under this Ordinance as a chemist and druggist ;
“dentist” shall mean every person lawfully entitled to practise as a dentist or dental surgeon in this Colony either separately or in addition to his practice as a medical practitioner or chemist and druggist on the day before the taking effect of this Ordinance and also every person duly qualified by registration under this Ordinance to practise as a dentist within this Colony ;
“midwife” shall mean every person duly registered as such under this Ordinance ;
“nurse” shall mean every trained nurse registered under this Ordinance ; |

* See Ord. No. 18 of 1905, Act No. 5 of 1909.

† Put in force from 1st January, 1905, by Proc. (Admn.) No. 98 of 1904.

“ Council ” shall mean the Transvaal Medical Council established under this Ordinance ;

“ Board ” shall mean the Transvaal Pharmacy Board established under this Ordinance.

4. The Laws and Volksraad Resolutions contained in the First Schedule to this Ordinance are hereby repealed ; and so much of any other law as may be repugnant to or inconsistent with the provisions of this Ordinance. Repeal.

PART II.

CONSTITUTION AND GENERAL POWERS OF THE TRANSVAAL MEDICAL COUNCIL AND THE TRANSVAAL PHARMACY BOARD.

5. On the day of the taking effect of this Ordinance there shall be established in this Colony:—

(a) a body to be styled the Transvaal Medical Council ; and

(b) a body to be styled the Transvaal Pharmacy Board. Establishment of Medical Council and Pharmacy Board.

6. The Council shall consist of eight medical practitioners and two dentists ; of the medical practitioners two shall be nominated by the Lieutenant-Governor the Medical Officer of Health of the Colony being one of them and of the dentists one shall be so nominated ; six medical practitioners and one dentist shall be elected by the medical practitioners and dentists of the Colony respectively in manner hereinafter provided. Not more than three of the elected medical practitioners shall be resident in one district. Council to consist of eight medical practitioners and two dentists.

7. The Board shall consist of one member of the Medical Council who shall from time to time be deputed by the Council to act upon the Board and of five chemists and druggists of whom two shall be nominated by the Lieutenant-Governor and three shall be elected by the chemists and druggists of the Colony in manner hereinafter provided. Board to consist of one member of Council and five chemists and druggists.

8. The members of the first Council and the first Board shall be elected in manner following :—

(a) on or before a date or dates to be fixed by notice in the *Gazette* under the hand of the Colonial Secretary every medical practitioner (in respect of the election of members of the Council) and every dentist (in respect of the election of the dental member of the Council) and every chemist and druggist (in respect of the election of the members of the Board) may sign and deliver to such person as may be appointed for the purpose by such notice a written paper to the following effect :—

Day of.....19....

Election of member (or members as the case may be) of the Transvaal Medical Council (or Transvaal Pharmacy Board as the case may be).

I vote for

I..... of.....

II..... of.....

Mode of election of members of first Council or first Board.

- III..... of.....
- IV..... of.....
- V..... of.....
- VI..... of.....

to be members of the Transvaal Medical Council (or Pharmacy Board as the case may be) for the period expiring on the.....day of.....19....

Signed.....

(b) the said written paper may be delivered through the post but no paper shall be accepted or counted which has not been delivered at the place appointed by such notice as aforesaid before four o'clock in the afternoon of the day fixed by that notice and unless the signature to such paper is attested as genuine by some justice of the peace ;

(c) any person entitled to vote at such election may vote for as many candidates as there are members to be elected provided that medical practitioners shall vote only for the medical members of the Council and dentists only for the dental member of the Council and chemists and druggists only for members of the Board ;

(d) such person as in sub-section (a) mentioned to whom the written papers are delivered shall open and count the said written papers and the duly qualified person or persons who shall have the greatest number of votes shall upon his certificate addressed to the Colonial Secretary be by notice in the *Gazette* appointed members of the Council or Board as the case may be ;

(e) in case of an equality of votes the Colonial Secretary shall have a casting vote.

Members of Council or Board to hold office for three years. Removal of members by Lieutenant-Governor.

9. The members of the Council or Board shall be nominated or elected for a term of three years. The Lieutenant-Governor may at the request of the Council or Board as the case may be if he be satisfied that due cause exists for such removal by notice in the *Gazette* under the hand of the Colonial Secretary remove any member. Any member may resign by letter addressed to the President of the Council or Board as the case may be and upon the removal death or resignation of any member some other qualified person shall be nominated or elected in manner hereinbefore provided to fill the vacancy caused by such removal death or resignation for the residue of the said term but it shall be lawful for the Council or Board as the case may be during such vacancy to exercise the powers hereinafter mentioned.

Day of first meeting fixed by Lieutenant-Governor.

10. The first meeting of the first Council and the first meeting of the first Board shall take place upon a day to be fixed by the Lieutenant-Governor within a month of the election in the notice appointing the elected members as aforesaid and at such meeting or adjournment thereof the members of the Council and of the Board respectively then present shall elect from amongst themselves a president of the Transvaal Medical Council and a president of the Transvaal Pharmacy Board and the person elected to either of the said offices shall hold the same during the continuance of his membership of the then existing Council or Board as the case may be. In the case of a vacancy occurring in the

post of president of the Council or of the Board the members of the Council or Board as the case may be shall elect from amongst themselves a person to fill such vacancy.

11. The dentists appointed as members of the Council as aforesaid shall be entitled to be present at all meetings of the Council but unless such dentists be also qualified medical practitioners they shall not be entitled to vote upon any question or matter brought before the Council unless by resolution of the majority of the members thereof such question or matter has been decided to relate to dentistry or dental surgery; provided however that such dentists shall be qualified to vote in any election of a president of the Council should such post from any cause become vacant.

Rights of dentists at meetings of Council.

*12. The Council or Board respectively may from time to time make rules and regulations to be approved of and published as in this Ordinance is provided regulating the times and places of the meetings of the Council or Board the mode of summoning the same and the general regulation of business; and in the absence of any rule or regulation as to the summoning of meetings the president may summon a meeting of the Council or Board as the case may be at such time and place as to him shall seem expedient by letter addressed to each member.

Council and Board to make rules and regulations for the conduct of the business of meetings.

13. At every meeting in the absence of the president some other member present shall be chosen to act as president and all acts of the Council or Board shall be decided by the votes of the majority of the members present at any meeting the whole number present being not less than four in the case of the Council and three in the case of the Board and at all meetings the president for the time being shall in addition to his vote as a member have a casting vote in case of an equality of votes.

Proceedings at meetings.

14. The Council or Board shall have power to appoint an executive committee out of their own body of which the quorum shall not be less than three and to delegate to such committee such powers and duties vested in the Council or Board as the Council or Board shall think fit.

Executive committee.

15. The Council or Board may respectively from time to time appoint a secretary at a reasonable salary and may by resolution remove such secretary from his office.

Secretary.

16. *Repealed by Act No. 5, 1909, section one (1).*

Regulation of future elections (after the first).

PART III.

REGISTRATION CERTIFICATES FOR MEDICAL PRACTITIONERS DENTISTS CHEMISTS AND DRUGGISTS MIDWIVES AND NURSES.

17. Every person who on the day before taking effect of this Ordinance shall be in this Colony:—

Persons lawfully entitled to practise before the taking effect of this Ordinance entitled to continue to practise and to obtain registration certificate.

- (a) lawfully entitled to practise as a medical practitioner; or
- (b) lawfully entitled to practise as a dentist; or

* For regulations of Medical Council see Govt. Notices Nos. 370 of 1905 (*Gazette*, 5/5/05), 346 of 1906 (*Gazette*, 6/4/06), 366 of 1907 (*Gazette*, 28/3/07), 266 of 1908 (*Gazette*, 13/3/08), 1051 of 1908 (*Gazette*, 16/10/08), 1125 of 1909 (*Gazette*, 1/10/09), 579 of 1910 (*Gazette*, 30/5/10). For regulations of Pharmacy Board see Govt. Notices Nos. 288 of 1905 (*Gazette*, 31/3/05), 1288 of 1909 (*Gazette*, 12/11/09).

(c) lawfully entitled to practise as a chemist and druggist ; shall notwithstanding the passing of this Ordinance be entitled to continue to practise or carry on his calling as aforesaid and shall be entitled without charge to the registration certificate referred to in sections *eighteen* and *twenty-three* as the case may be ; provided that :—

(1) the names addresses and qualifications of all such persons shall as soon as may be after the taking effect of this Ordinance be entered in the register referred to in this Ordinance ;

(2) every such person shall on and after the said date be amenable to all the provisions of this Ordinance or of any law relating to medical practitioners dentists or chemists and druggists as the case may be ;

(3) every such dentist as aforesaid shall be placed upon the aforesaid register upon production to the secretary of the Council within two months after the aforesaid date of a declaration in the form of the Second Schedule to this Ordinance signed by him and setting forth his name and address and his qualification for the practise of dental surgery ;

(4) no omission of or mistake in any entry which should be made in the aforesaid register in accordance with sub-section (1) of this section shall be deemed to prejudice the right of the person in respect of whose name address or qualification such omission or mistake has occurred to practise as aforesaid if lawfully entitled to do so.

*18. On and after the day on which this Ordinance takes effect no person (save and except such person as is referred to in the last preceding section) shall be entitled to practise as a medical practitioner or dentist unless he has obtained a registration certificate signed by the Colonial Secretary on the recommendation of the Council on payment of a fee of ten pounds ; previously to obtaining such registration certificate such person shall submit his diploma or other certificate of his being duly qualified to practise as a medical practitioner or dentist as the case may be for the examination and approval of the Council who may require by sworn declaration before a justice of the peace or by other evidence such proof of identity and good character of such person and of the authenticity and present validity of such diploma or certificate as it shall deem fit and any person wilfully making a false statement in such declaration shall be liable to the penalties provided by law for the crime of perjury ; provided always that the Colonial Secretary shall if the Council be satisfied with the proof of his identity and good character grant a certificate to every applicant whose name appears in the British Medical Register or who is entitled to be registered in Great Britain and Ireland ; and provided further that the Lieutenant-Governor may at any time within six months from the date of the taking effect of this Ordinance, anything in this Ordinance or any other law to the contrary notwithstanding, grant a licence to be admitted as a medical practitioner to any person

After this Ordinance takes effect no person entitled to practise as medical practitioner or dentist unless he has obtained a registration certificate signed by the Colonial Secretary.

* See Act No. 5 of 1909, sec. 2.

with whose qualification and experience he is satisfied and who shall for a period of twelve years prior to the taking effect of Proclamation (Transvaal) No. 1 of 1902 have been continuously practising as a physician surgeon or accoucheur in this Colony and the name of such person shall thereupon be entered in the register referred to in this Ordinance.

*19. No such registration certificate as aforesaid shall be granted to any applicant to practise as a medical practitioner or dentist by virtue of the degree diploma or certificate of a foreign or Colonial university or medical school unless it be proved to the satisfaction of the Council that ;

When registration certificate shall not be granted to holder of degree diploma or certificate of a foreign or Colonial university or medical school.

(1) the said degree or diploma entitled the holder to practise as a medical practitioner or dentist as the case may be in the country or state in which it was granted ;

(2) by the laws of the country in which such degree or diploma was conferred British subjects legally qualified to practise as medical practitioners or dentists in Great Britain and Ireland are afforded privileges equivalent to those granted by registration under this Ordinance ;

(3) the curriculum and standard of proficiency of examination required for such degree diploma or certificate are not lower than those prescribed by the General Council of Medical Education of the United Kingdom ;

provided always that anything to the contrary notwithstanding in this or any other section of this Ordinance contained any person who shall have been in actual practice as a dentist in the Transvaal prior to the date of the taking effect of Proclamation (Transvaal) No. 1 of 1902 and who was qualified to practise as such dentist under the laws in force prior to such date as aforesaid shall be entitled to a certificate of registration and to have his name entered on the register referred to in this Ordinance.

20. Where the Council has refused to approve of the diploma or certificate submitted in terms of section *eighteen* or *nineteen* by any person desirous of being registered as a medical practitioner or dentist the Supreme Court on application made to it by such person may after notice of such application has been given to the Council order that a registration certificate be issued to the applicant in case it shall be of opinion that the Council has not acted in accordance with the provisions of the said sections and the name of such applicant shall thereupon be entered in the register referred to in this Ordinance.

When Supreme Court may order a registration certificate to be issued.

21. Notwithstanding anything to the contrary contained in this Ordinance any medical officer in His Majesty's military or naval service may exercise his profession in such service but not otherwise without obtaining the registration certificate as aforesaid.

Military or naval medical officer may exercise his profession in such service without registration certificate.

22. Every medical practitioner registered under this Ordinance shall be entitled to compound and dispense medicines prescribed by himself or any other medical practitioner with whom he is in partnership or with whom he is professionally associated either as

Every medical practitioner registered under this Ordinance entitled to dispense medicines on payment of licence fixed by law.

* See Act No. 5 of 1909, sec. 2.

a principal or assistant upon payment of the annual licence fee required by law to be paid by a chemist or druggist; provided that no medical practitioner shall be required to pay an annual licence fee for merely compounding or dispensing medicines prescribed by him for and on behalf of any department of the public service of the Colony; and provided further that the partner principal or assistant of any medical practitioner who has himself paid such licence fee as aforesaid shall be entitled without payment of any licence fee to compound and dispense in the dispensary of the said medical practitioner medicines prescribed by himself or the said medical practitioner as the case may be.

Who may obtain a registration certificate to practise as a chemist and druggist.

†23. Any person who has attained the age of twenty-one years and has been duly indentured and served an apprenticeship for a period of not less than four years to any regularly licenced chemist and druggist in this Colony * or elsewhere in *His Majesty's Dominions* or who can produce satisfactory proof that he has been practically engaged in the dispensing of medicines or medical prescriptions under a duly licenced chemist and druggist for a period of not less than four years may on passing an examination to the satisfaction of the Board in any subjects fixed by it with the approval of the Lieutenant-Governor and on payment of a fee of five pounds obtain from the Colonial Secretary a registration certificate which shall entitle him to practise as a chemist or druggist; such examination may be held before the Board or any members thereof appointed by it for the purpose or before such other persons as the Board may appoint as examiners in accordance with regulations made by the Board and approved of and published as in this Ordinance is prescribed; provided that the Board may in accordance with such regulations accept as sufficient proof of proficiency in any subject a certificate to be agreed upon by the Board that the person referred to in such certificate has satisfactorily passed an examination in such subject.

Candidate to satisfy Board he is entitled to be examined and to pay fee.

24. No person shall be admitted as a candidate at such examination unless he shall have satisfied the Board that he is entitled to be examined and unless he shall have paid such fee for such examination not exceeding ten pounds as may be prescribed by such rules and regulations as aforesaid.

Holder of certain certificates may obtain registration certificate without further examination.

25. Any person who holds a certificate or diploma of competency as a chemist or druggist from the Pharmaceutical Society of Great Britain or from any college society or board recognized by the Board under regulations made approved and published as in this Ordinance provided may if otherwise complying with the provisions of this Ordinance and of such regulations without further examination obtain from the Colonial Secretary a registration certificate to practise as a chemist and druggist in this Colony.

Colonial Secretary to sign registration certificates. Persons who have served an apprenticeship to a dentist may register as students.

26. All registration certificates aforesaid issued to chemists and druggists shall be signed by the Colonial Secretary upon the recommendation of the Board.

†27. Persons who have served an apprenticeship of not less than three years to a dentist entitled to be registered under this

† For regulations see note to sec. 12.

* Words in italics inserted by Ord. No. 18 of 1905 sec. 1.

† For regulations under this section see Govt. Notice No. 406 of 1905 (*Gazette*, 12/5/06).

Ordinance and who are bona fide engaged as mechanical assistants to dentists in this Colony at the date of the passing of this Ordinance may register as students within two months thereof and during the next two years may present themselves for examination under rules to be drawn up by the Council and if approved of after such examination by the Council the Colonial Secretary shall grant certificates of registration to such persons under this Ordinance to practise as dentists.

§28. The Council in accordance with regulations approved of by the Lieutenant-Governor may grant certificates of competency in midwifery ;

Council may grant certificates of competency in midwifery.

(a) to any female who is the holder of a certificate or diploma of a midwife granted by any one of such examining bodies as the Council may from time to time prescribe and define ;

(b) to any female who may satisfy the examiners thereto appointed by the Council of her competence skill and fitness in and for the practice of a midwife's calling.

Every such certificate shall entitle the holder to practise midwifery according to regulations to be framed by the Council from time to time and shall be signed by the president and secretary of the Council and shall on payment of a fee of one pound be entered in a register kept for that purpose in connection with and as part of the register provided for in this Ordinance.

29. If any person practising as a midwife shall through culpable uncleanness or failure to take ordinary precautions for preventing or safeguarding against puerperal fever or any similar disease cause injury or serious ill-health to any lying-in woman such person shall on conviction be liable to a fine not exceeding fifty pounds or failing payment of such fine to imprisonment without hard labour for a period not exceeding three months ; provided that proceedings under this section shall not be pleadable in bar of any civil or criminal proceedings against the same person.

Midwife causing injury to lying-in woman through negligence liable to penalty.

30. Any person practising as a midwife who shall falsely pretend to be a certificated midwife or shall falsely use or adopt any name title or description implying that she is a certificated midwife under this Ordinance shall be liable to a fine not exceeding twenty-five pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Penalty for falsely pretending to be a certificated midwife.

31. The Council may at any time withdraw or cancel a certificate granted to a midwife in terms of section *twenty-eight* of this Ordinance if it shall be proved to the satisfaction of the Council that the holder thereof is incompetent or has been guilty of such improper conduct as in the opinion of the Council renders it inadvisable that she should continue to practise as a certificated midwife.

Council may withdraw certificate granted to a midwife.

§ For regulations see Govt. Notices Nos. 370 of 1905 (*Gazette*, 5/5/05), 997 of 1906 (*Gazette*, 5/10/06), 1201 of 1906 (*Gazette*, 16/11/06).

Council may grant certificates of competency as trained nurses.

*32. The Council may in accordance with regulations approved of by the Lieutenant-Governor grant certificates of competence as trained nurses ;

(a) to any person who is the holder of a certificate as a trained nurse granted by any one of such examining or other bodies as the Council may from time to time prescribe and define ;

(b) to any person who satisfies the examiners thereto appointed by the Council of his or her competence skill and fitness in and for the occupation of nursing and who shall in addition produce proof by certificate or otherwise of having had sufficient training in nursing work under competent supervision.

Every such certificate shall be granted and signed in manner hereinbefore provided in the case of midwifery certificates and shall on payment of a fee of one pound be entered in a register kept for that purpose in connection with and as part of the register provided for in this Ordinance.

Council may withdraw certificates.

33. The Council may at any time withdraw or cancel a certificate granted to a trained nurse if it shall be proved that the holder is incompetent or has been guilty of such improper conduct as in the opinion of the Council renders it inadvisable that he or she should continue to practise as a trained nurse.

Any person who shall falsely pretend to be a trained nurse registered under this Ordinance or who shall falsely use or adopt any name title or description implying that he or she is such a registered trained nurse shall be liable to all the penalties set forth in section *thirty* of this Ordinance.

Council may prescribe the fees to be paid by candidates for midwifery and nursing certificates.

†34. The Council may by regulations approved of by the Lieutenant-Governor and published as in this Ordinance is provided from time to time prescribe the fees which shall be paid to the Council by persons presenting themselves for examination under the provisions of section *twenty-eight* sub-section (b) and section *thirty-two* sub-section (b) of this Ordinance provided that no such fee shall exceed the sum of five pounds.

Council shall publish annually a list of holders of registration certificates.

35. The ‡ *Colonial Secretary* shall in the month of January in each year publish in the *Gazette* a list containing the names of all holders on the thirty-first of December last preceding of registration certificates as

- (a) medical practitioners ;
- (d) midwives ;
- (c) chemists and druggists ;
- (d) midwives ;
- (e) nurses ;

any such list shall wherever possible state the addresses of such holders.

* For regulations see Govt. Notices Nos. 370 of 1905 (*Gazette*, 5/5/05), 1201 of 1906 (*Gazette*, 16/11/06), 994 of 1907 (*Gazette*, 6/9/07) ; and regulations for trained mental nurses see Govt. Notice No. 492 of 1909 (*Gazette*, 7/5/09).

† For regulations see Govt. Notice No. 370 of 1905 (*Gazette*, 5/5/05).

‡ Words in italics substituted by Ord. No. 18 of 1905, sec. 2.

36. No person shall be deemed to be disqualified to be duly registered and lawfully entitled to practise as a medical practitioner dentist or chemist and druggist merely by reason that such person is a female.

Females not disqualified from practising.

37. No society or association of persons who are not registered under this Ordinance may use the descriptions or titles provided herein nor may any company incorporated by law carry on the business of chemist and druggist unless the managing director of such company is a duly registered chemist and druggist and unless the name of the assistant who himself must be qualified under this Ordinance managing such shop or other place in which the business is carried on by the company is conspicuously posted in such shop or place ; provided that anything which would be an offence under this Ordinance if committed by an individual shall be an offence by every director of a company if committed by such company ; provided further that nothing in this section shall be held to prevent the employment by any registered dentist or chemist and druggist as the case may be of an unqualified assistant or assistants for the purpose of mechanical dental work or of compounding drugs and dispensing medicines under his personal supervision.

No company may carry on the business of chemist and druggist unless the managing director is duly registered as such practitioners.

38. Any person who shall wilfully procure or attempt to procure himself or any other person to be registered under this Ordinance by making or producing or causing to be made or produced any false or fraudulent representation either verbally or in writing not amounting to the crime of perjury and every person aiding or assisting him therein shall on conviction thereof be liable to be imprisoned with or without hard labour for a period not exceeding twelve months.

Penalty for procuring registration by false representations.

39. Any person who shall wilfully and falsely pretend to be or take or use the name or title of a physician doctor of medicine licentiate in medicine or surgery bachelor of medicine doctor surgeon general medical practitioner or apothecary or dentist or chemist or druggist or any name title addition or description implying or calculated to lead people to infer that he is registered under this Ordinance or that he is duly qualified to practise as a physician doctor of medicine or surgeon or licentiate in medicine and surgery bachelor of medicine doctor general medical practitioner or an apothecary or a dentist or a chemist and druggist and any person who shall practise or shall do any thing or perform such acts as specially belong to the calling of a medical practitioner dentist or chemist and druggist respectively without such registration as aforesaid shall be liable to a fine not exceeding one hundred pounds for each offence and in default of payment he shall be liable to imprisonment with or without hard labour for a period not exceeding six months unless such fine be sooner paid.

Penalty for falsely pretending to be qualified or for practising without being registered.

No person who is charged with a contravention of this section for practising as a dentist or chemist and druggist shall be acquitted by reason of the fact that he is in the employ of or is agent for a person lawfully entitled to practise as aforesaid unless he is under the personal supervision and control of such last-mentioned person.

PART IV.

REGISTER OF MEDICAL PRACTITIONERS DENTISTS CHEMISTS
AND DRUGGISTS AND CERTIFICATED MIDWIVES AND NURSES.

Register to
be kept in the
office of the
Colonial
Secretary.

40. (1) There shall be kept in the office of the Colonial Secretary a correct register of the names addresses dates of registration and qualifications of all ;

- (a) medical practitioners ;
 - (b) dentists ;
 - (c) chemists and druggists ;
 - (d) certificated midwives ; and
 - (e) trained nurses ;
- in this Colony ;

which register shall be kept in five corresponding parts and the person appointed by the Colonial Secretary to keep such register shall make entries therein in accordance with information from time to time supplied by the secretary of the Council in respect of medical practitioners dentists certificated midwives and trained nurses and by the secretary of the Board in respect of chemists and druggists and shall from time to time erase the names of all registered persons reported to him by the secretary of the Council or Board or known to him to have died and shall from time to time make necessary alterations in the addresses or statements of qualification of the persons registered under this Ordinance.

(2) To enable the register to be properly kept the secretary of the Council or Board may write and forward a duly registered letter to any registered person addressed to him according to his address on the register and inquire of him whether he has ceased to practise or has changed his residence and if no answer shall be returned to such letter within the period of six months from the posting thereof it shall be lawful to erase the name of such person from the register ; provided always that the same may be restored at the request of the Council or Board as the case may be and provided further that the erasure of such person's name shall not in itself disqualify him from practising the profession or carrying on the calling in respect of which he is duly certified.

Person registered may have qualifications altered in register on payment of fee.

*41. Every person registered under this Ordinance who may have obtained any degree or qualification other than the degree or qualification in respect of which he may be registered may with the consent in writing of the Council or Board as the case may be have such other degree or qualification inserted in the register in substitution for or in addition to the degree or qualification already registered on payment of such fee as may be prescribed by regulations made by the Council or Board as the case may be and approved of and published as in the Ordinance is provided.

No degree or qualification to be registered unless the Council or Board is satisfied that person is entitled to it.

42. No degree or qualification shall be entered on the register either on the first registration or by way of addition to a registered name or as in the last section mentioned unless the Council or Board as the case may be be satisfied by the proper evidence that the person claiming it is entitled to it ; and any entry which shall be proved to the satisfaction of the Council or Board to have been fraudulently or incorrectly made may be

* For regulations see Govt. Notice No. 370 of 1905 (*Gazette*, 5/5/05).

erased from the register ; provided that a record of the reason for every such erasure shall be signed by or on behalf of the Colonial Secretary and kept in his office.

43. The Colonial Secretary shall at the request of the Council or Board as the case may be cause to be erased from the register the name of any person who either before or after the passing of this Ordinance may have been declared disqualified for practice or whose name may have been struck off the roll register or record of the hospital university college or other body in this Colony or elsewhere from which such person received any diploma degree certificate or any other instrument upon the faith of which such person was permitted to practise in this Colony and thereupon such person shall no longer be deemed to be a medical practitioner dentist or chemist and druggist nurse or midwife as the case may be ; provided that the Colonial Secretary before causing the name of such person to be erased shall be satisfied that such person has if possible had an opportunity of showing cause before the Council or Board as the case may be why his name should not be erased from such register.

The name of any person who has been disqualified or whose name has been struck off the roll of his hospital university or college may be erased from the register.

*44. If any person registered or certificated under this Ordinance shall after due inquiry at which such person shall have an opportunity for being heard be judged by the Council or Board as the case may be to have been guilty of improper or unprofessional conduct the Council or Board as the case may be may reprimand and caution such person in writing under the hand of its president and if such improper or unprofessional conduct be persisted in by such person after due receipt of such reprimand or caution or if the Council or Board as the case may be shall judge such person after such inquiry to have been guilty of infamous or disgraceful conduct in any professional or other respect the Colonial Secretary may on the advice of the Council or Board direct that the name of such person be erased from the register and that his certificate be withdrawn and cancelled. The Council or Board as the case may be shall make such inquiry upon bona fide information or complaint made by any member of the public or by the Medical Officer of Health for the Transvaal ; provided that the name of such person may be restored thereafter to the register on the request of the Council or Board as the case may be ; and provided further that no person whose name shall be erased from the register under this section shall be qualified to practise the profession or carry on the calling in respect of which he was registered until his name shall have been restored as aforesaid.

The name of any person guilty of unprofessional conduct may be erased from the register by direction of the Colonial Secretary.

45. If any person registered or certificated under this Ordinance shall after due inquiry in manner provided by the last preceding section of this Ordinance be found to have counselled or knowingly been a party to the performance of any act in respect of which any other person shall have been convicted of a contravention of section *thirty-eight* of this Ordinance such first-mentioned person shall be dealt with under the last preceding section as a person guilty of improper or unprofessional conduct or of infamous or disgraceful conduct as such Council or Board shall determine ; provided that the provision of this section

Counselling any act in respect of which another person shall be convicted of contravening section *thirty-eight* shall be considered unprofessional conduct.

* For regulations governing enquiries held under this section see Govt. Notice No. 1051 of 1908 (*Gazette*, 16/10/08.)

shall not be deemed to exempt any person from prosecution for any contravention of the said section *thirty-eight* to which he may be liable.

Licence or certificate fraudulently obtained shall be void.

46. Any licence or certificate obtained either before or after the taking effect of this Ordinance by means of any false or fraudulent representation or by personation shall be void and any person holding or practising by virtue of any such licence or certificate shall be liable to the penalties provided by sections *thirty thirty-three* and *thirty-nine* of this Ordinance for practising without a registration certificate.

PART V.

KEEPING AND SALE OF POISONS.

Articles named in the Third Schedule deemed to be poison.

*47. The several articles named and described in the Third Schedule to this Ordinance shall be deemed to be poisons within the meaning of this Ordinance and the Council or Board may from time to time by resolution declare that any article in such resolution named ought to be deemed a poison within the meaning of Part I or Part II of the said Schedule to this Ordinance and thereupon such resolution shall be submitted through the Colonial Secretary for the approval of the Lieutenant-Governor and if such approval shall be given then such resolution and approval shall be published in the *Gazette* and on the expiration of one month from such publication the article named shall be deemed to be a poison accordingly within the meaning of this Ordinance.

All poisons to be labelled "Poison".

48. All medical practitioners chemists and druggists dentists and veterinary surgeons and all persons under this Ordinance entitled to keep or sell poisons shall label all vessels boxes bottles wrappers or packages in their possession containing articles deemed to be poisons under this Ordinance with the word "poison" and shall exercise due care and caution in the custody of the same.

Penalty for suffering in poisons to be kept without due care or for selling drugs of bad quality.

49. If any person mentioned in the last preceding section shall contravene the provisions thereof or shall sell or keep for sale by himself or any apprentice servant or agent any medicines or drugs of bad quality he shall be liable to a fine not exceeding seventy-five pounds or in default of payment to be imprisoned with or without hard labour for a period not exceeding six months unless such fine be sooner paid and shall further become liable to the withdrawal and cancellation of his certificate and to have his name erased from the register if the Colonial Secretary by the advice of the Council or Board as the case may be shall deem it fit to withdraw or cancel the same.

Who may sell poisons.

‡50. Poisons within the meaning of this Ordinance shall not be sold by any person other than by a registered medical practitioner dentist chemist and druggist veterinary surgeon or the

* See Ord. No. 18 of 1905, sec. 3. The following poisons were added:— Gum opium and extract of opium to Part I of the Third Schedule, preparations of opium and preparations of poppies to Part II by Govt. Notice No. 278 of 1905 (*Gazette*, 24/3/05), caustic soda to Part II by Govt. Notice No. 1095 of 1907 (*Gazette*, 4/10/07).

‡ See Act No. 4 of 1909, sec. 3 (4).

indentured apprentice or bona fide paid assistant of such person; provided that nothing herein contained shall be deemed to limit the operation of section *twenty-two* of this Ordinance.

*51. (1) *Notwithstanding anything in section fifty contained the resident magistrate of any district may issue a certificate to an importer or general dealer carrying on business within such district authorizing him to keep for sale and to sell poisons for any mining agricultural or industrial purpose and further may issue a certificate to any person resident in the district authorizing him to keep for sale and to sell poisons prepared for the destruction of wild animals or vermin or for the treatment of scab or other diseases in animals or for fumigating plants or for treating insect pests or plant disease.*

Importer or general dealer may obtain certificate from magistrate and may then sell poisons for industrial purposes.

(2) *Every such certificate shall state that the holder thereof is a fit and proper person to deal in such poisons as are mentioned in this section.*

(3) *Every such poison as is mentioned in this section shall be kept for sale and sold in quantities of not less than one pound in weight or in unbroken vials properly corked and sealed and labelled with the name of the article and the word "poison" and bearing the name of the person by whom such article was in the first instance prepared for sale.*

52. †*No such importer general dealer or other person holding a certificate from the resident magistrate as aforesaid shall sell or dispose of any poison for the purposes mentioned in the last preceding section unless he is satisfied that the person desiring to obtain the same requires it for any such purpose and it shall be the duty of every such importer general dealer or other person aforesaid to require information in writing from the person desiring to obtain such poison as to the particular purpose for which it is required and every such person shall give such information on such request.*

Poisons not to be sold except to persons producing certificate from resident magistrate.

53. Every such importer or general dealer ‡*or other person holding a certificate from the resident magistrate as aforesaid* as aforesaid shall in regard to every such sale or disposal enter in the book to be kept for that purpose

Book of sale of poisons to be kept.

- (a) the date of the sale or disposal;
- (b) the nature and quantity of the poison disposed of;
- (c) the name of the purchaser;
- (d) the purpose for which the poison was required;

and shall allow the said book to be at any time inspected by the resident magistrate of the district or any person authorized by the said magistrate in writing. Any importer or general dealer §*or other person holding a certificate from the resident magistrate as aforesaid* contravening the provisions of this or the last preceding section shall be liable to a fine not exceeding fifty pounds.

54. If any person shall keep in his possession or under his control any poison without exercising all due care and caution in

Penalty for keeping poison without due care.

* This section substituted by Ord. No. 18 of 1905, sec. 4.

† This section substituted by Ord. No. 18 of 1905, sec. 5.

‡ Words in italics inserted by Ord. No. 18 of 1905, sec. 6.

§ Words in italics inserted by Ord. No. 18 of 1905, sec. 6.

the custody of the same he shall be liable to a fine not exceeding ten pounds or in default of payment to imprisonment for a period not exceeding one month.

Conditions
under which
poison may
be sold.

‡55. Every medical practitioner dentist chemist and druggist veterinary surgeon and the indentured apprentice or bona fide assistant of such persons may in the course of his lawful business or profession sell poison under the following conditions and no other :—

(a) if the box bottle vessel wrapper or cover in which any poison is contained on delivery to the purchaser be in every case of sale of such poison conspicuously labelled with the name of the article and the word “poison” and the name and address of the seller ;

(b) if the sale be by wholesale in the ordinary course of trade or business on an order in writing signed by the purchaser ;

(c) if the sale be on a prescription of a medical practitioner to the person producing it and if an entry be made in a book called the “prescription book” to be kept for that purpose setting forth in separate columns the date of sale the name and address of the purchaser and the ingredients and quantities of the prescription ;

(d) if no such prescription of a medical practitioner be produced then if an entry be made in a book called the “poisons book” to be kept for that purpose specifying in lieu of the ingredients and quantities aforesaid a statement of the quantity sold and the purpose for which such poison is stated to be required ; and in case the purchaser is not known to the seller and in case the poison sold be a poison now enumerated or hereafter added as aforesaid to the list of poisons named in Part I of the Third Schedule to this Ordinance if such entry shall be before delivery of the poison signed by the purchaser and also by some person known to the seller who shall have introduced the purchaser to the seller ;

(e) in the case of any contract for the sale of any poison now enumerated or hereafter added as aforesaid to the list of poisons named in Part I of the Third Schedule to the Ordinance if the seller shall keep the correspondence from the purchaser relative to such sale and shall make such entry of all particulars as aforesaid in the aforesaid book and shall either be acquainted with the signature of the purchaser or shall receive and keep a written attestation by some resident magistrate justice of the peace or minister of religion of the genuineness of such signature ;

(f) if the purchaser be not under age of fifteen except on the prescription of a duly qualified and registered medical practitioner.

Penalty for
contravening
sections *fifty*
and *fifty-five*.

56. Any person convicted of a contravention of any of the provisions of sections *fifty* and *fifty-five* of this Ordinance shall be liable to a fine not exceeding fifty pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding two months and every chemist and druggist shall be responsible for every act or default of any apprentice clerk servant

‡ See Act No. 4 of 1909, sec 3 (4).

or agent in his employment other than the person entitled to take out the annual licence as a chemist and druggist in respect of the improper sale of any poison in breach of any provision of either of the said sections in case the said act or default was due to negligence on the part of such chemist or druggist in supervising the conduct of such apprentice clerk servant or agent.

*57. The book kept by every chemist and druggist in manner provided in sub-section (d) of section *fifty-five* of this Ordinance shall be submitted on demand for the inspection of the secretary of the Board or of any person authorized by him in writing under his hand and any such chemist and druggist who personally or by any apprentice clerk servant or agent employed by himself shall fail forthwith upon demand to produce such book for inspection shall be liable upon conviction to a fine not exceeding twenty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months unless such fine be sooner paid.

Poisons book must be submitted for inspection of secretary of Board.

58. If any person purchasing any poison within the meaning of this Ordinance shall give false information to the seller in relation to the particulars which the seller is authorized to require or if any person sign as witness to the sale of any such poison to a person unknown to such witness or if any person fail to comply with any provision of this part of this Ordinance for which no specific penalty is provided he shall on conviction be liable to a fine not exceeding twenty pounds and in default of payment of such fine to imprisonment with or without hard labour for a period not exceeding three months.

Penalty on purchaser giving false information to seller.

PART VI.

MISCELLANEOUS.

59. It shall be lawful for the secretary of the Council or Board as the case may be or any person duly authorized in writing under the hand of the president to take and institute any proceedings civil and criminal on behalf of the Council or Board but nothing herein contained shall be deemed to deprive any person of any right which but for this section he would have to institute any proceedings civil or criminal against any other person.

Institution of proceedings civil or criminal.

60. The *Gazette* containing the list mentioned in section *thirty-five* of this Ordinance shall be evidence in all proceedings civil or criminal that the persons whose names appear on such list are registered according to the provisions of this Ordinance; and the absence of the name of any person from such list shall be evidence until the contrary be made to appear that such person is not registered according to the provisions of this Ordinance; provided always that in the case of any person whose name does not appear on such list a certificate under the hand of the Colonial Secretary that the name of such person is entered on the register shall be evidence that such person is registered under the provisions of this Ordinance.

Certificate of Colonial Secretary prima facie proof of registration.

61. Every chemist's shop shall be conducted under the bona fide and personal supervision of a registered chemist and druggist.

Chemist's shop.

* See Ord. No. 25 of 1906, secs. 4 and 5.

British Pharmacopoeia to be used.

62. All chemists and druggists shall prepare their medicines according to the British Pharmacopoeia unless otherwise directed by the prescribing medical practitioner provided that it shall be lawful for the Lieutenant-Governor by Proclamation on the advice of the Council or Board to determine what edition of the British Pharmacopoeia shall be used and to authorize such alterations in the preparations mentioned therein as may be found necessary to meet the special conditions of this Colony.

Council concerned with medical practitioners dentists midwives and nurses.
Board concerned with chemists and druggists.
Rules and regulations to be approved of by the Lieutenant-Governor.

63. The Council shall be deemed to be concerned with and interested in matters arising out of and in connection with so much of this Ordinance as deals with medical practitioners dentists midwives and nurses and the Board shall be deemed to be concerned with and interested in matters arising out of and in connection with so much of this Ordinance as deals with chemists and druggists.

Powers of Council or Board at inquiries.

64. All rules and regulations by this Ordinance authorized to be made by the Council or Board shall be of legal validity only when approved of and published by the Lieutenant-Governor by notice in the *Gazette* and by such regulations penalties for the breach thereof may be prescribed not exceeding in any case a fine of ten pounds.

Only registered practitioners may recover charges in court of law.

65. For the purpose of any inquiry by the Council or Board authorized by this Ordinance the Council or Board shall be vested with all the powers jurisdiction and privileges conferred by the Commissions' Powers Ordinance 1902.

66. No person shall be entitled to recover any charge in any court of law for any medical or surgical advice attendance or for the performance of any operation as a medical practitioner or dentist or commonly performed only by a medical practitioner or dentist or for any medicine which he shall have prescribed or dispensed unless he shall prove upon the trial that he is registered under this Ordinance.

Only licensed and registered person may hold appointment in any hospital or other public establishment.

67. No person shall hold any appointment as a physician surgeon or any other medical officer or dentist or dispenser of any medicines in any hospital or in any lunatic asylum convict station prison house of correction or other public establishment or institution or to any friendly or other society for affording mutual relief in sickness infirmity or old age or as a medical officer of health unless he be registered under this Ordinance as a medical practitioner dentist or chemist and druggist as the case may be.

No medical certificate valid unless signed by licensed and registered person.
Fees for registration and fines shall be paid to the Council or Board for administration.

68. No certificate required by any law now or hereafter in force from any medical practitioner shall be valid unless the person signing the same shall be licensed and registered under this Ordinance.

69. The Council and the Board shall respectively administer for the purpose of this Ordinance such funds as may be derived from examination fees and fees payable thereunder in respect of the registration of medical practitioners dentists chemists and druggists midwives and nurses which fees shall be paid over to the Council and the Board respectively.

FIRST SCHEDULE.

Volksraad Resolution 22nd May 1875 article 114 (in so far as it refers to the admission fees of doctors and apothecaries).
 Law No. 12 of 1886.
 First Volksraad Resolution 22nd July, 1895, article 695.
 Proclamation No. 1 of 1902.

SECOND SCHEDULE.

I.....residing at.....and holding the qualifications of.....hereby declare that I was bona fide engaged in the practice of dentistry at.....at the date of the taking effect of the "Medical Dental and Pharmacy Ordinance, 1904."
 Dated at.....this.....day of.....19....

(Signed)

(Witness)

*** THIRD SCHEDULE.**

LIST OF POISONS WITHIN THE MEANING OF THE ORDINANCE.

PART I.

NOT TO BE SOLD UNLESS the purchaser is known to or is introduced by some person known to the seller;

also

ENTRY TO BE MADE IN POISON-BOOK of:—

1. Date of sale;
 2. Name and address of purchaser;
 3. Name and quantity of article;
 4. Purpose for which it is wanted;
- attested by signature; and

MUST BE LABELLED WITH

1. Name of article.
2. The word "poison."
3. Name and address of seller.

Arsenic and its preparations.
Aconite and its preparations.
Alkaloids. All poisonous vegetable alkaloids and their salts.
Atropine and its preparations.
Cantharides.
Cocaine and its preparations.
Corrosive Sublimate and its preparations.
Cyanide of Potassium and all metallic cyanides and their preparations.
Emetic Tartar.
Ergot of Rye and its preparations.
Prussic Acid and its preparations.
Savin and its oil.
Strychnine and its preparations.
Vermin Killers if preparations or poisons the preparations of which are in Part I of this Schedule.

PART II.

Almonds, Essential Oil of (unless deprived of Prussic Acid);
Belladonna and its preparations.
Cantharides, Tincture and all vesicating liquid preparations of.
Carbolic Acid and other liquid disinfectants.
Chloroform.
Chloral Hydrate and its preparations. }
Morphia, preparations of. }
Nux Vomica and its preparations.
Opium and its preparations and preparations of poppies.
Oxalic Acid.
Precipitate Red (Red Oxide of Mercury).
Precipitate White (Ammoniated Mercury).
Vermin Killers (see Part I). Compounds containing "poisons" prepared for the destruction of vermin if not subject to the provisions of Part I are in Part II.

MUST BE LABELLED WITH

1. Name of article.
2. The word "poison."
3. Name and address of seller.

* For list of poisons added see note to sec. 47 of this Ordinance; see Ord. No. 18 of 1903, sec. 3, as to transfer of poisons from Part I to Part II of this Schedule and vice versa.

No. 31 of 1904.]

[Promulgated 12th August, 1904.]

ORDINANCE

TO AMEND THE ADMINISTRATION OF JUSTICE PROCLAMATION, 1902.

Assented to 10th August, 1904.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. (1) Notwithstanding anything to the contrary contained in section *twenty* of the Administration of Justice Proclamation 1902 it shall be lawful for one judge of the Supreme Court to hear and determine any action if ;

(a) both parties to the action consent to its being so heard ;

or

(b) the action is remitted to be so heard by order of the Supreme Court.

(2) One judge sitting to hear any such action as is referred to in this section shall be deemed to constitute a court and such court shall be styled a divisional court.

2. Where the parties to an action consent to its being heard by a divisional court either party thereto or his attorney shall after the close of the pleadings file with the Registrar of the Supreme Court such consent in writing signed by the parties to the action or their attorneys.

3. The Supreme Court may after the close of the pleadings on the application of either party to an action or of its own motion remit such action to be heard by a divisional court.

4. (1) It shall be lawful for any person being a party to any action tried in a divisional court to appeal to the Supreme Court against any judgment decree or order of such court.

(2) The provisions of the Administration of Justice Proclamation 1902 relating to appeals from the Witwatersrand High Court shall *mutatis mutandis* apply to appeals from a divisional court to the Supreme Court.

5. The Supreme Court on the hearing of any appeal from the Witwatersrand High Court or a divisional court against a judgment decree or order in an action shall have power to remit such action to such court for further hearing with such instructions as regards the taking of further evidence or otherwise as may be deemed necessary and further shall have all the powers and duties as to amendment and otherwise of the said High Court or divisional court together with the power to receive further evidence on questions of fact either orally or on affidavit or by depositions before a commissioner and it shall further have power to give any judgment or make any order which any such court might have given or made or to make such further or other order as the case may require.

Trial of by consent or order ; actions before one judge of Supreme Court styled a divisional court.

Filing of consent with Registrar.

Remittal to divisional court by Supreme Court.

Appeal from decision of divisional court.

Jurisdiction of Supreme Court on appeals to remit to court of first instance with further instructions.

6. It shall be lawful for any person being a party to an action which comes before one judge during vacation under the provisions of section *twenty-one* of the Administration of Justice Proclamation 1902 to appeal to the Supreme Court sitting in term time against any judgment decree or order of such judge; and thereupon the provisions of the Administration of Justice Proclamation 1902 relating to appeals from the Witwatersrand High Court shall *mutatis mutandis* apply to such appeals.

Appeal to Supreme Court against decision of one judge sitting in vacation.

7. The period of three years mentioned in paragraph (c) of section *eleven* of the Administration of Justice Proclamation 1902 shall be reduced to a period of one year if the person mentioned in the said paragraph shall satisfy the court that he was articled to serve and did serve as a clerk for a period not less than three years:—

Amendment of section *eleven* of Proclamation Transvaal No. 14 of 1902 to allow period of articles in other British possessions to be taken into consideration.

(a) to any attorney or solicitor of any of the courts of record in London or Dublin;

(b) to a writer to the signet or a solicitor or law agent admitted to practise in Scotland;

(c) to an attorney of the Supreme Court of any Colony or Territory now forming any part of British South Africa.

8. Section *eleven* of the Administration of Justice Proclamation 1902 shall be and is hereby amended by the addition to sub-section (d) of the said section of the following proviso: "provided always that no person shall be admitted as an attorney under this sub-section unless for a period of three years preceding the date of his admission as attorney or solicitor in a British Colony he was articled to serve and did serve as a clerk to an enrolled attorney or solicitor in such British Colony."

Amendment of section *eleven* sub-section (d) of Proclamation Transvaal No. 14 of 1902 as to admission of attorneys from British Colonies.

*9. The judges of the Supreme Court may from time to time make alter or rescind rules respecting the authentication or legalization of the signatures to any document executed out of this Colony and intended for use in any court or public office in this Colony; provided always that no such rule shall affect the law of evidence in this Colony as to the proof of any document nor the authentication of any document for which special provision is made by any law.

Power to judges to make rules as to authentication of documents executed outside Colony for use in Colony.

10. This Ordinance may be cited for all purposes as the Administration of Justice Amendment Ordinance 1904 and shall be read as one with the Administration of Justice Proclamation 1902.

Title.

* For rules under this section see Govt. Notice No. 1084 of 1905 (*Gazette*, 5/12/05).

No. 32 of 1904.]

[Promulgated 12th August, 1904.]

ORDINANCE

TO APPLY A SUM OF MONEY FOR THE SERVICE OF THE YEAR ENDED
THE 30TH DAY OF JUNE, 1903.

Assented to 10th August, 1904.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

Public
revenue to be
charged with
£11,453 4s.
11d.

1. The public revenue of this Colony is hereby charged towards the service of the year ended the 30th day of June 1903 with a sum of eleven thousand four hundred and fifty-three pounds four shillings and elevenpence sterling in addition to the sum mentioned in the Appropriation Ordinance 1903 and the Appropriation Ordinance (No. 2) 1903.

How to be
applied.

2. The money granted by this Ordinance shall be applied to the purposes and services set forth in the Schedule annexed hereto.

Not to be
applied
otherwise
than as
granted.

3. The moneys granted by this Ordinance shall not be issued or applied to any use intent or purpose other than the particular services to which the said amounts have been granted respectively by this Ordinance.

The Treasurer
to make
payments
under
warrant of
the
Lieutenant-
Governor.

4. The Colonial Treasurer being duly authorized thereto by warrant under the hand of the Lieutenant-Governor shall issue and pay from time to time such sums of money as shall be required for the purposes herein before mentioned not exceeding in the whole the sums respectively in that behalf specified and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant; and the receipts of the persons to whom such sums shall have been so paid shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given.

Title.

5. This Ordinance may be cited as The Appropriation Ordinance (No. 1) 1904.

SCHEDULE.

No. of Vote.	Title of Vote.	Accounting Officer.	Amount.
IV g.	Pretoria Hospital ..	Medical Superintendent	£ s. d. 152 19 3
IV h.	Government Printing Works	Government Printer ..	9,047 5 11
IX.	Transport	Accountant-General ..	1,522 8 0
X.	Exchange and Bank Charges	Accountant-General ..	493 15 3
XXVI.	Special payments ..	Accountant-General ..	236 16 6
TOTAL ..			£11,453 4 11

No. 33 of 1904.]

[Promulgated 12th August, 1904.

ORDINANCE

TO APPLY A SUM OF MONEY FOR THE SERVICE OF THE YEAR ENDED THE 30TH DAY OF JUNE, 1904.

Assented to 10th August, 1904.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows ;

1. The public revenue of this Colony is hereby charged towards the service of the year ended the 30th day of June 1904 with a sum of one million and fifty-nine thousand seven hundred and fifty-nine pounds sterling and is further charged towards the service of the Administration of Swaziland for the said year with a sum of twenty-four thousand and seven hundred pounds sterling in addition to the sum mentioned in the Appropriation Ordinance (No. 3) 1903.

Public revenue to be charged with £1,084,459.

2. The money granted by this Ordinance shall be applied to the purposes and services set forth in the Schedule annexed hereto.

How to be applied.

3. The moneys granted by this Ordinance shall not be issued or applied to any use intent or purpose other than the particular services to which the said amounts have been granted respectively by this Ordinance.

Not to be applied otherwise than as granted.

4. The Colonial Treasurer being duly authorized thereto by warrant under the hand of the Lieutenant-Governor shall issue and pay from time to time such sums of money as shall be required for the purposes herein before mentioned not exceeding in the whole the sums respectively in that behalf specified and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant ; and the receipts of the persons to whom such sums shall have been so paid shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given.

The Treasurer to make payments under warrant of the Lieutenant-Governor.

5. This Ordinance may be cited as The Appropriation Ordinance (No. 2) 1904.

Title.

SCHEDULE.

No. of Vote.	Title of Vote.	Accounting Officer.	Amount.
I	Pensions and Gratuities	Accountant-General ..	£1,807
IV	Colonial Secretary ..	Assistant Colonial Secretary	8,489
V	Public Works Establishment and Maintenance	Secretary for Public Works	87,542
VII	Education	Director of Education ..	78,118
X	Pretoria Hospital ..	Medical Superintendent	2,951
XI	Government Printing Office	Government Printer ..	22,673
XII	Grants-in-aid	Assistant Colonial Secretary	25,212
XVIII	Prisons	Director of Prisons ..	16,878
XXVI	Customs	Director of Customs ..	14,595
XXVIII	Transport and Immigration	Accountant-General ..	6,245
XXXI	Land Department ..	Secretary, Land Dept. ..	970
XXXIV	Agriculture and Forests	Secretary, Land Dept. ..	24,285
XXXV	Census	Commissioner of Census	16,500
XXXVII	Labour Importation ..	Superintendent	3,494
XXXVIII	Contribution to Inter-Colonial Council ..	Accountant-General ..	750,000
XXXIX	Swaziland Expenditure	Secretary for Native Affairs	24,700
TOTAL ..			£1,084,459

No. 34 of 1904.]

[Promulgated 12th August, 1904.]

ORDINANCE

TO APPLY A SUM OF MONEY FOR THE SERVICE OF THE YEAR
ENDING THE 30TH DAY OF JUNE, 1905.

Assented to 10th August, 1904.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. The public revenue of this Colony is hereby charged towards the service of the year ending the 30th day of June 1905 with a sum of four million one hundred and thirty-two thousand two hundred and eighty-four pounds sterling and is further charged towards the service of the Administration of Swaziland for the said year with a sum of twenty-five thousand two hundred and eighty pounds sterling. Public revenue to be charged with £4,157,564.
2. The money granted by this Ordinance shall be applied to the purposes and services set forth in the Schedule annexed hereto. How to be applied.
3. The moneys granted by this Ordinance shall not be issued or applied to any use intent or purpose other than the particular services to which the said amounts have been granted respectively by this Ordinance. Not to be applied otherwise than as granted.
4. The Colonial Treasurer being duly authorized thereto by warrant under the hand of the Lieutenant-Governor shall issue and pay from time to time such sums of money as shall be required for the purposes herein before mentioned not exceeding in the whole the sums respectively in that behalf specified and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant ; and the receipts of the persons to whom such sums shall have been so paid shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given. The Treasurer to make payments under warrant of the Lieutenant-Governor.
5. This Ordinance may be cited as The Appropriation Ordinance (No. 3) 1904. Title.

*SCHEDULE OF ESTIMATED EXPENDITURE FOR THE
YEAR 1904-05.*

No. of Vote.	Title of Vote.	Accounting Officer.	Amount.
I	Inter-Colonial Council	Accountant-General ..	£1,000,000
II	Pensions and Gratuities	" " ..	11,000
III	H.E. the Lieutenant-Governor	Private Secretary to H.E.	12,362
IV	Executive and Legislative Councils	Clerk to the Councils ..	30,465
V	Colonial Secretary ..	Assistant Col. Sec. ..	30,100
VI	Education ..	Director of Education	307,742
VII	Local Government ..	Assistant Col. Sec. for Local Government	12,189
VIII	Public Health ..	Medical Officer of Health	106,690
IX	Pretoria Hospital ..	Medical Superintendent	19,300
X	Printing and Stationery	Government Printer ..	64,443
XI	Labour Importation..	Superintendent ..	15,404
XII	Attorney-General ..	Sec. to the Law Dept.	23,620
XIII	Sheriff ..	" " ..	8,970
XIV	Commissioner of Patents, etc.	" " ..	4,770
XV	Registrar of Deeds ..	" " ..	12,185
XVI	Master of the Supreme Court	" " ..	10,380
XVII	Superior Courts ..	" " ..	52,420
XVIII	Magistrates ..	" " ..	122,864
XIX	Lunatic Asylum ..	Medical Superintendent	23,891
XX	Town Police ..	Commissioner of Police	330,097
XXI	Prisons ..	Director of Prisons ..	127,886
XXII	Native Affairs ..	Sec. for Native Affairs..	87,155
XXIII	Game Preservation ..	" " ..	5,000
XXIV	Treasury ..	Accountant-General ..	16,184
XXV	Audit ..	Auditor-General ..	11,859
XXVI	Customs ..	Director of Customs ..	70,955
XXVII	Posts and Telegraphs	Postmaster-General ..	395,276
XXVIII	Internal Revenue ..	Accountant-General ..	18,908
XXIX	Mines ..	Sec. to the Mines Dept.	117,720
XXX	Land ..	Under Sec. for Lands	26,947
XXXI	Public Works ..	Sec. for Public Works	533,857
XXXII	Surveyor-General ..	Surveyor-General ..	27,743
XXXIII	Agriculture and Forests	Director of Agriculture	99,688
XXXIV	Irrigation and Water Supply	Director of Irrigation ..	79,000
XXXV	Grants-in-aid (General)	Assistant Col. Sec. ..	58,434
XXXVI	Grants-in-aid to Local Authorities	Assistant Col. Sec. for Local Government	42,100
XXXVII	Immigration ..	Assistant Col. Sec. ..	13,683
XXXVIII	Volunteers ..	Commandant ..	163,303
XXXIX	Census ..	Commissioner of Census	25,194
XL	Miscellaneous ..	Accountant-General ..	12,500
TOTAL ..			£4,132,284
Swaziland Expenditure--Secretary for Swaziland ..			£25,280

No. 35 of 1904.]

[Promulgated 12th August, 1904.]

ORDINANCE

TO PROVIDE OUT OF TREASURY BALANCES FOR THE CONSTRUCTION OF CERTAIN WORKS AND OTHER PURPOSES.

Assented to 10th August, 1904.

WHEREAS it is desirable to make provision out of balances in the hands of the Treasurer for the construction of certain works and for the eradication of disease among cattle and for other purposes;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. It shall be lawful for the Lieutenant-Governor by warrant under his hand to authorize the Colonial Treasurer to issue and pay from time to time out of any balances remaining in his hands on the thirtieth day of June 1904 and not appropriated by law for any other purpose such sums of money as shall be required for the purposes specified in the Schedule attached to this Ordinance not exceeding the amounts respectively specified for such purposes.

Power of Lieutenant-Governor to authorize issue and payment of certain balances of moneys unappropriated on 30th June 1904.

2. All sums of money issued under the provisions of this Ordinance shall be applied to the purposes and services set forth in the said Schedule until the same are completed and shall not be used or applied for any other purpose.

Moneys issued under Ordinance to be applied only to purposes set forth in Schedule.

3. The Colonial Treasurer being duly authorized as provided herein by warrant under the hand of the Lieutenant-Governor shall issue the sums of money specified in such warrants to the persons designated in the Schedule hereto as accounting officers for the respective votes and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrants ; and the receipts of the accounting officers aforesaid shall be to him a full discharge for the sums for which such receipts shall have been given.

Colonial Treasurer to issue moneys specified in warrant of Lieutenant-Governor to persons designated in Schedule.

4. This Ordinance may be cited as the Appropriation Ordinance (Extraordinary) 1904.

Title.

SCHEDULE.

<i>Vote.</i>	<i>Amount.</i>	<i>Accounting Officer.</i>
A.	£160,000	Secretary of Public Works Department.
PUBLIC WORKS.		
1. Pretoria Lunatic Asylum (amount required for completion of work)	£120,000	
2. Government House, Pretoria	40,000	
	£160,000	

<i>Vote.</i>	<i>Amount.</i>							<i>Accounting Officer.</i>
B.	£27,000							Postmaster-General.
TELEPHONE *RECONSTRUCTION.								
1. Material	.. .. .	..	..	..	..	..	..	£13,000
2. Labour	.. .. .	..	..	..	..	..	..	14,000
								£27,000

<i>Vote.</i>	<i>Amount.</i>							<i>Accounting Officer.</i>
C.	£63,000							Director of Agriculture. Extirpation of Disease.

As in Gazette.

No. 36 of 1904.]

[Promulgated 12th August, 1904.]

ORDINANCE

TO PROVIDE FOR THE IMPRISONMENT IN THIS COLONY OF
CRIMINALS SENTENCED IN ADJACENT TERRITORIES.

Assented to 10th August, 1904.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. Every person who has been or may hereafter be sentenced to imprisonment with or without hard labour by any competent court within any Colony or Territory in South Africa to which the Lieutenant-Governor may under section *three* declare the provisions of this Ordinance to extend or apply may be sent into imprisoned or detained in custody in the Transvaal until the expiration of such sentence or during such portion thereof as may be deemed necessary; and thereupon the said person shall be treated in every respect as if the said sentence had been pronounced by some competent court within this Colony.

Lieutenant-Governor authorized to imprison within this Colony criminals sentenced in other Territories.

2. A certificate signed by the Attorney-General of this Colony setting forth that from documents laid before him it appears that any person named in such certificate has been sentenced as in the last preceding section mentioned and for any term named in such certificate shall in all courts and places whatsoever be deemed and taken to be conclusive evidence at all times during the continuance of such term that any such person is duly imprisoned with or without hard labour (as the case may be) under the provisions of this Ordinance.

Certificate of Attorney-General to be evidence of sentence. How Ordinance to be applied for other Territories.

*3. This Ordinance shall take effect so far as concerns any Colony or Territory in South Africa as soon as the Lieutenant-Governor shall by Proclamation declare that such Colony or Territory has made provision for the imprisonment or detention therein of offenders sentenced by a competent court of this Colony.

Power to Lieutenant-Governor to remove prisoners in this Colony to another Colony or Territory for imprisonment or detention.

4. Whenever the Lieutenant-Governor shall have so declared by Proclamation that any such Colony or Territory has made such provision as in the last preceding section is mentioned it shall be lawful for the Lieutenant-Governor by warrant under the hand of the Attorney-General to remove any person who is undergoing sentence of imprisonment imposed by a competent court in this Colony to any such Colony or Territory mentioned in the said Proclamation for the purpose of detention or imprisonment therein in accordance with the laws of such Colony or Territory until the expiration of his sentence or removal back to this Colony and any such person shall be deemed in lawful custody during the course of such removal.

5. This Ordinance may be cited as the Prisoners' Detention Ordinance 1904. Title.

* This Ordinance was declared to take effect as concerns Orange River Colony by Proc. (Admn.) No. 58 of 1904, Southern Rhodesia by Proc. (Admn.) No. 86 of 1904, Cape Colony by Proc. (Admn.) 97 of 1904, Natal by Proc. (Admn.) No. 73 of 1905.

No. 37 of 1904.]

[Promulgated 26th August, 1904.]

ORDINANCE *

FOR THE REGULATION OF VOLUNTEER CORPS.

Assented to 15th August, 1904.

WHEREAS it is expedient that the "Volunteer Corps Ordinance 1902" should be repealed and that provision be made for the formation discipline and maintenance of volunteer corps :

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

Interpreta-
tion of terms.

1. In this Ordinance unless the context otherwise denotes the following expressions in inverted commas shall bear the meanings respectively set opposite them ;

"volunteer"—any officer warrant officer non-commissioned officer or man belonging to a volunteer corps and enrolled under this Ordinance ;

"Commandant"—Commandant of Transvaal Volunteers ;

"active service"—any volunteer corps shall be deemed to be on active service when it has been called out for active service by Proclamation under this Ordinance ;

"commanding officer"—the officer in command of any regiment battery battalion or corps ;

"corps"—any military body or any portion of the Volunteer Force which may be declared by the Lieutenant-Governor to be a corps for the purposes of this Ordinance ;

"efficient"—a volunteer who has completed the requirements for efficiency as defined in the regulations made under this Ordinance ;

"Government property"—all property movable and immovable belonging to or vested in the Government of the Transvaal and issued or set apart for the use of volunteers ;

"corps property"—all property purchased out of the funds of corps or presented to corps ;

"military service"—volunteers shall be considered to be on military service ;

(1) when called out by the Lieutenant-Governor under this Ordinance to aid the civil power in the protection of life or property ;

(2) when assembled in any camp of training or exercise or when going to or returning from any such camp or while engaged in any military exercise or drill or when carrying out any escort duty or guard of honour or while in uniform at any time or place ;

"non-commissioned officer"—includes an acting non-commissioned officer ;

* See Act No. 21 of 1908.

- “officer”—any person holding a commission or whose appointment as an officer has been notified in the *Gazette* ;
- “permanent staff”—all officers warrant officers non-commissioned officers drill instructors armourers and store-keepers or any other persons appointed under section *seventeen* of this Ordinance who shall while holding their appointments be deemed to be always on military service ;
- “regiment or battalion”—a combination of guns squadrons companies or corps formed into a body not exceeding the establishment fixed by the regulations made under this Ordinance for a battery regiment or battalion ;
- “regulations”—regulations made under the provisions of this Ordinance ;
- “reserve volunteers or reserves”—all volunteers serving in a reserve as provided by this Ordinance ;
- “cadets”—all cadets serving in cadet corps or companies subject to the provisions of this Ordinance ;
- “The Army Act”—the Act of the Imperial Parliament called “The Army Act 1881” and any Act or Acts amending or in substitution for it including the Articles of War made under the authority of such Act or Acts and for the time being in force.

*2. The Lieutenant-Governor may accept the service of any persons desiring to be formed under this Ordinance into a volunteer corps for military duties on such terms as he may think fit and by such acceptance the proposed corps shall be deemed to be lawfully formed into a volunteer corps under this Ordinance.

Lieutenant-Governor may accept the services of volunteer corps.

†3. The Lieutenant-Governor may at any time discontinue the service of and cause to be disbanded any volunteer corps formed under the last preceding section and he may dispense with the services of and dismiss any member of any volunteer corps.

Lieutenant-Governor may discontinue service of any volunteer corps. Volunteer corps liable to service wherever required.

4. Every volunteer or volunteer corps shall be liable to serve within this Colony or in any part of South Africa subject to the provisions of this Ordinance whenever in the opinion of the Lieutenant-Governor the interest of the Colony may require such service.

‡5. (1) It shall be lawful for the Lieutenant-Governor in case of actual or apprehended invasion of or rebellion within the Colony by Proclamation in the *Gazette* to call out for active service the whole or any portion of any volunteer corps and any member of such force not incapacitated by bodily

Lieutenant-Governor may call out volunteer corps for active or military service.

* Volunteer corps were established under Govt. Notices Nos. 787, 1907 (*Gazette*, 12/7/07), 956 of 1908 (*Gazette*, 25/9/08), 305 of 1909 (*Gazette*, 19/3/09), 743 of 1909 (*Gazette*, 2/7/09), 1028 of 1909 (*Gazette*, 3/9/09). For establishment of existing corps, see Govt. Notices Nos. 4 of 1910 (*Gazette*, 7/1/10), 83 of 1910 (*Gazette*, 21/1/10), 249 of 1910 (*Gazette* 11/3/10). For alteration of designation, see Govt. Notices Nos. 1279 of 1907 (*Gazette*, 22/11/07), 1028 of 1909 (*Gazette*, 19/3/09).

† Sec Govt. Notices Nos. 788 of 1907 (*Gazette*, 12/7/07), 326 of 1908 (*Gazette*, 3/4/08), 956 of 1908 (*Gazette*, 25/9/08).

‡ Volunteer corps called out for service by Proc. (Admn.) No. 34 of 1906.

infirmity who refuses or neglects to assemble or march as ordered shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding one year.

(2) It shall be lawful for the Lieutenant-Governor to call out the whole or any part of a volunteer corps for the protection of life or property and any volunteer so called out who not being prevented by bodily infirmity or any other reasonable cause refuses or neglects to obey such orders shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Volunteers on active or military service subject to the Army Act.

6. Volunteers when on active or military service shall be subject to the provisions of the Army Act; provided that no volunteer shall under the provisions of the Army Act be detained in custody for an offence committed on military service for a longer period than that for which the corps to which he belongs or any portion thereof shall continue to be on such military service; and further provided that nothing in this Ordinance contained shall be construed to exclude a volunteer at any time from the operation of the provisions of this Ordinance and the regulations framed thereunder.

Volunteer not liable both under this Ordinance and the Army Act.

7. Notwithstanding the provisions contained in section *six* hereof no volunteer shall be liable to be punished for any offence under the provisions of this Ordinance as well as under the provisions of the Army Act; provided however that dismissal from his corps may be lawfully added to any punishment awarded to a volunteer by virtue of the provisions of the Army Act.

Command of volunteers on active or military service.

8. Whenever any volunteer corps is on active or military service the Lieutenant-Governor may place it under the command of such officer of His Majesty's Forces as he may appoint; provided that the officer so appointed shall be senior in rank to every officer of the corps so placed under his command and that such corps shall be led by its own officers under such command as aforesaid.

Officer of volunteer corps.

9. Every officer of a volunteer corps shall be appointed and commissioned by the Lieutenant-Governor.

Regulations.

§10. The Lieutenant-Governor may from time to time make regulations for all or any of the matters or things following—

- (1) constitution or formation of establishments and precedence of corps;
- (2) the appointment promotion transfer resignation and dismissal of officers;
- (3) the enrolment posting transfer promotion discharge and dismissal of volunteer non-commissioned officers and men and the disbandment of any volunteer corps;
- (4) the appointment and posting of the permanent staff together with rules for their control discipline pay allowances discharge and dismissal or reversion to military duty;

§ For regulations, see Govt. Notices Nos. 972 of 1909 (*Gazette*, 20/8/09), 1031 of 1909 (*Gazette* 3/9/09), 1273 of 1909 (*Gazette*, 5/11/09).

- (5) the discipline of the force;
- (6) the assemblage of courts of inquiry with rules regarding the attendance of witnesses;
- (7) the provision of arms equipment ammunition saddlery and the safe custody and maintenance of the same;
- (8) the general government and management of volunteer corps;
- (9) dress and clothing;
- (10) drill and musketry inspection;
- (11) camps of exercise field days guards of honour and similar duties;
- (12) the qualifications entitling a volunteer to be deemed efficient; the earning of capitation grant and horse cycle signalling and other allowances;
- (13) the expenditure of capitation and other grants and allowances;
- (14) returns books and correspondence;
- (15) medals and decorations;
- (16) rules for reserves and cadet corps;
- (17) pensions gratuities concessions and compensation for losses sustained by volunteers on duty;
- (18) rates of pay of the respective ranks when on active or military service.

11. Every volunteer who has been dismissed by the Lieutenant-Governor or by his commanding officer shall be bound to deliver up in good order (fair wear and tear only excepted) all arms clothing and appointments which are Government or corps property and which have been issued to him and he shall be liable to pay all money due or becoming due by him under the rules of his corps either before or at the time of or by reason of his dismissal.

Liabilities of volunteers on dismissal.

12. Every volunteer who shall be guilty of contravening any of the provisions of this Ordinance for which no penalty is specially provided or any of the regulations shall upon conviction by his commanding officer be liable to a penalty not exceeding ten pounds and to dismissal from his corps or to one or other of these penalties.

Penalty for contravention of regulations etc.

13. The records of evidence taken before a commanding officer and the finding and sentence inflicted by a commanding officer in the exercise of the jurisdiction conferred on him by section *twelve* hereof shall be submitted forthwith to the commandant who may quash the conviction or confirm or reduce the sentence and the sentence so confirmed or reduced shall be notified by the commanding officer to the volunteer convicted by means of registered letter and every fine so notified which is not paid within seven days of the date of the posting of such notification may together with any costs incurred by reason of such non-payment be recovered in any court of resident magistrate having jurisdiction on mere production to such court of a properly authenticated copy of such notification under the hand of such commanding officer.

Power of commandant to confirm or reduce sentence of commanding officer.

Commanding officer may summon witnesses etc.

14. It shall be lawful for any commanding officer in the exercise of the jurisdiction conferred on him by section *twelve* of this Ordinance to summon in writing any volunteer under his command alleged to have contravened the provisions of this Ordinance or the regulations and any witnesses alleged to be material to the charge to appear before him and to administer oaths to such witnesses and generally to investigate the charge in such manner as the Lieutenant-Governor may by regulation determine; and any person so summoned as a witness who shall fail to attend at the time and place mentioned in such summons or having attended shall refuse to give evidence shall be liable on conviction before a resident magistrate to a fine not exceeding twenty-five pounds or in default of payment thereof to imprisonment with hard labour for one month.

Period of enlistment.

15. Every volunteer enrolled under the provisions of this Ordinance shall be enrolled for a minimum period of one year but he may obtain his discharge at an earlier date subject to such conditions as the Lieutenant-Governor may by regulation determine.

Provision of equipment.

16. The Lieutenant-Governor may with the consent of the Executive Council make provision out of the money voted for that purpose for the proper equipment maintenance and pay of any volunteer corps constituted under the provisions of this Ordinance.

Permanent staff.

17. The Lieutenant-Governor may from time to time constitute for the volunteer force a permanent staff consisting of such officers warrant officers non-commissioned officers and men as he may deem fit.

Formation and regulation of volunteer reserves and cadet corps.

18. It shall be lawful for the Lieutenant-Governor to sanction the formation of volunteer reserves and of cadet corps and to provide out of the funds placed at his disposal for that purpose arms accoutrements and ammunition for the use of such reserves and cadet corps the members of which shall serve subject to such conditions as the Lieutenant-Governor may by regulation determine.

Railway fares for volunteers in uniform.

19. Every volunteer when in uniform and provided with a pass shall be entitled to travel at half fares on Government railways within the Transvaal between the places mentioned in the said pass.

Exemption from payment of toll.

20. Every volunteer when in uniform whose duty it shall be in proceeding to and from any place to pass through any toll-bar or over any ferry at or in respect of which the payment of the toll shall now be or may hereafter be lawfully demanded shall be exempted from payment of any toll in respect of himself and of any animal and vehicle that may be required for the performance of the duty on which he may be employed.

Detention at tolls.

21. Any person duly authorized to collect tolls who shall wilfully subject any volunteer in uniform when travelling on duty to unreasonable delay or detention shall be liable on conviction to a penalty not exceeding five pounds.

Penalty for impersonation.

22. If any person not being a volunteer shall represent himself to be a volunteer or if any volunteer not then being

on duty shall falsely represent himself to be on duty with the intent to evade the payment of any toll legally payable by him he shall on conviction be liable to a penalty not exceeding seventy-five pounds or in default of payment thereof to imprisonment for a period not exceeding six months unless such fine be sooner paid.

23. If any person shall in consequence of the sale pledge loan or other disposition of any animal arms ammunition accoutrements clothing or equipment made by a volunteer in contravention of this Ordinance or of the regulations knowingly receive or have any such animal arms ammunition accoutrements clothing or equipment as above mentioned such person shall be liable to a fine not exceeding one hundred pounds in respect of each such animal article matter or thing and in default of payment thereof shall be liable to be imprisoned with or without hard labour for any period not exceeding one year.

Penalty for receiving arms, etc., from members of force contrary to orders.

24. No animal article matter or thing mentioned in the last preceding section and forbidden by this Ordinance or the regulations to be sold pledged or otherwise disposed of shall be capable of being seized or attached by or under any writ of execution which may be sued out against any volunteer nor shall the same pass by or under any order made for the sequestration of the estate of any volunteer.

Freedom from attachment of such animal and arms.

25. Any volunteer who lends pledges sells or contrary to orders or regulations disposes of any Government or corps property shall on conviction be liable to the penalties provided by section *twenty-three* hereof.

Penalty for disposing of Government or corps property. Commencement of actions.

26. For the protection of persons acting in the execution of this Ordinance all actions against any person for anything done in pursuance of this Ordinance shall be commenced within four months after the cause for such action shall have arisen and not otherwise and notice in writing of such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action and if the verdict shall be given for the defendant or the plaintiff be non-suited or discontinue any such action after issue or if upon exception or otherwise judgment shall be given against the plaintiff the defendant shall recover his full costs as between attorney and client.

27. The Lieutenant-Governor may make regulations for the billeting and cantoning of volunteer forces when on active service; for the furnishing of railway cars engines carriages horses boats and other conveyances for their transport and use; and for requisition from those who possess them of such buildings vehicles and animals together with such provisions forage and other necessaries as shall be needed for the service of such forces and for the adequate compensation therefor and may by such regulations impose a fine not exceeding five pounds for each breach thereof and imprisonment in cases of default of payment of such a fine. And any person contravening any such regulation may be prosecuted before the court of the resident magistrate in whose district such contravention has been committed.

Lieutenant-Governor may make regulations for the billeting and cantoning of volunteers when on active service.

Seizure of articles of Government or corps property by order of commanding officer.

28. If a volunteer shall neglect or refuse when thereto required to give up to such person as his commanding officer shall appoint to receive them all or any articles which have been issued to him and which are Government or corps property it shall be lawful for the commanding officer to direct any such person by order in writing to seize such article wherever found and for that purpose to enter upon and search the dwelling of such member or any premises in which there is reasonable grounds for suspecting that the articles may be found.

Rifles or other property wrongfully possessed may be seized.

29. It shall be lawful for the commanding officer of any corps to take possession of or cause to be taken possession of any rifle or other Government or corps property that he may find or ascertain to be in the possession of any person or persons other than the volunteer to whom it was issued.

Punishment for persons not volunteers wearing uniform.

30. If any person not serving in the volunteer forces wears without permission the uniform of any corps or any dress having the appearance or bearing any of the regimental or other distinctive marks of such uniform he shall be liable on a summary conviction before a magistrate having jurisdiction to a fine not exceeding five pounds.

Liability of volunteer for loss of Government or corps property.

31. Any volunteer who shall injure lose lend pledge sell or contrary to orders or regulations dispose of or retain any Government or corps property shall in addition to any penalty imposed in respect of such loan pledge sale or disposition by virtue of section *twenty-five* be liable to pay a sum of money equal to double the cost price of such property which may be recovered from him with costs in the same manner as penalties imposed for a contravention of the regulations are recoverable; provided that should any damage to or loss of such property be caused by him without any carelessness or fault on his part the proof whereof shall be imposed on him the commandant may upon being satisfied thereof exempt him from such payment or impose the payment of the cost price only of such property.

Punishments for damaging butts.

32. If any person wilfully commits any damage to any butt or target belonging to or lawfully used by any volunteer corps or searches for bullets in or otherwise disturbs the soil forming such butt or target he shall for every such offence be liable in addition to making good the damage done to a penalty not exceeding five pounds.

Wilful obstruction of force on march or parade.

33. Any person who shall wilfully obstruct or impede any corps or detachment of volunteer forces while on the march or parade shall upon conviction before a magistrate be liable to a penalty not exceeding five pounds or in default to imprisonment for any period not exceeding one month with or without hard labour.

Corps funds.

34. All money subscribed by or for the use of a corps and all arms stores ammunition musical instruments and other property articles and things whatsoever belonging to or used by any such corps not being the property of any member thereof shall be vested in the commanding officer of such corps in trust for the corps.

35. Nothing in this Ordinance contained shall prevent any offender from being prosecuted otherwise than under the provisions of this Ordinance in all cases in which he would by law without this Ordinance be liable to such prosecution; but no volunteer convicted or acquitted of any crime or offence under the provisions of this Ordinance or under the Army Act shall be liable to be again tried for the same crime or offence; provided that nothing herein contained shall prevent any volunteer who has been acquitted or convicted from being dismissed from the said force or reduced in rank therein.

Reservations of liberty to prosecution otherwise than under this Ordinance.

36. Whenever it shall be necessary to enforce enactments provisions and regulations in this Ordinance mentioned in any place situate beyond the borders of this Colony the sentences fines and penalties which shall be pronounced and inflicted for the purpose of such enforcements shall be as valid and effectual and shall be carried into effect in the same manner as if the same had been pronounced in this Colony.

Enforcement of orders in places beyond borders of Colony.

37. The volunteers belonging to any volunteer corps may from time to time make rules for the management of the property finances and civil affairs of the corps and for securing the efficiency of the members of the corps and may alter or repeal any such rules; but any such rules shall not have effect unless and until the commanding officer of the corps thinks fit to transmit the same for the Lieutenant-Governor's approval and such approval signified through the commandant is notified to the commanding officer of the corps to be by him forthwith communicated to the corps whereupon the rules so approved shall be binding on all persons.

Rules for corps management.

A copy of the rules in print or writing or partly in print and partly in writing certified under the hand of the commanding officer of the corps as a true copy of the rules whereof His Excellency the Lieutenant-Governor's approval has been notified as aforesaid shall be conclusive evidence of the rules of the corps.

38. If any person belonging or having belonged to a volunteer corps or regiment neglects or refuses to pay money subscribed or undertaken to be paid by him towards any of the funds or expenses of such corps or regiment or due under any of the rules of such corps and actually payable by him or to pay any fine incurred by him under the rules of such corps such money or fine shall (without prejudice to any other remedy) be recoverable from him with costs at any time within four months after the same becomes due and payable in the same manner as a penalty for a breach of the regulations framed under this Ordinance is recoverable and when recovered shall be applied as part of the general fund of the corps or regiment.

Payment of money due by volunteers.

39. In the case of any volunteer who shall be temporarily or permanently disabled by reason of any wound or injury received or sickness contracted by him when on active or military service it shall be lawful for the Lieutenant-Governor to award such volunteer such gratuity or yearly pension as to him may seem fit but such gratuity shall not exceed an amount

Pensions for disabled members of Volunteer Forces.

equal to three years' pay of his rank at the date of such injury wound or sickness and such pension shall not exceed one hundred pounds per annum.

Pension not transferable.

40. No pension payable under this Ordinance shall be assignable or transferable nor shall the same be attached arrested or levied upon for or in respect of any debt or claim due by the recipient thereof or his wife.

Pension not matter of right.

41. Nothing in this Ordinance contained shall be construed so as to entitle any volunteer to claim as a matter of right any gratuity or pension as aforesaid.

Widow or family of volunteer; pension to.

42. It shall be lawful for the Lieutenant-Governor to assign to the widow or family of any volunteer who may be killed in action or on active service a pension or allowance not exceeding one hundred pounds per annum.

Repeal.

43. The Volunteer Corps Ordinance 1902 shall be and is hereby repealed and all volunteers serving thereunder at the date of promulgation hereof shall complete their term of service subject to the provisions of this Ordinance.

Title.

44. This Ordinance may be cited for all purposes as the Volunteer Corps Ordinance 1904.

No. 38 of 1904.]

[Promulgated 26th August, 1904.

ORDINANCE

TO MAKE FURTHER PROVISION FOR PREVENTING THE SPREAD OF
DISEASE AMONGST CATTLE KNOWN AS EAST COAST FEVER.

Assented to 15th August, 1904.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. In this Ordinance unless inconsistent with the context
“cattle” shall mean any ox bull cow heifer or calf or any animal which the Lieutenant-Governor may by Proclamation declare to be cattle within the meaning of this Ordinance;
“disease” shall mean the disease known as Rhodesian redwater or East Coast fever;
“district” shall mean any magisterial district of this Colony;
“infected area” shall mean an area declared under section *four* to be infected with disease;
“suspected area” shall mean any farm or land abutting upon an infected area or any farm or land in a proclaimed district suspected on reasonable grounds of having been exposed to infection and declared in manner prescribed by section *four* to be a suspected area;
†“Commissioner of Lands” shall include in addition to the person holding that office any person generally or specially authorized by such person to carry out the provisions of this Ordinance.

Interpreta-
tion of terms.

2. This Ordinance shall except where otherwise expressly provided only be in force in a district in which it is put into force by Proclamation of the Lieutenant-Governor who may withdraw by Proclamation any such district from the operation of the Ordinance.

Power to
proclaim
districts
under
Ordinance.

PART I.

REMOVAL AND SLAUGHTERING OF CATTLE.

3. It shall be lawful for the Commissioner of Lands† to cause to be destroyed any cattle
(a) which are found to be infected with disease; or
(b) which have been in contact with any cattle infected with disease or have been on any infected or suspected area.

Destruction
of infected
animals.

† Subsequently Minister of Agriculture, see Govt. Notice No. 281 of 1907 (*Gazette*, 4/3/07).

Declaration of infected and suspected areas.

4. (1) Whenever it shall come to the knowledge of any person that the disease has broken out on any farm or land it shall be the duty of such person to forthwith report such fact to the nearest resident magistrate assistant resident magistrate justice of the peace **field cornet* district veterinary surgeon or nearest officer of police and thereupon the Commissioner of Lands may cause an inquiry to be made into such report and if such report be found correct he shall by notice affixed on such farm or land and in a newspaper (if any) circulating in the district notify such farm or land to be infected with disease and may when he is satisfied that such farm or land is free from disease withdraw such notice.

(2) The Commissioner of Lands may by like notices declare any farm or land to be a suspected area if he has reasonable grounds for believing such farm or land to have been exposed to infection and may at any time withdraw such notice.

Removal of non-infected cattle from suspected or infected area.

5. The Commissioner of Lands may permit the removal of any cattle not infected with disease which are on a suspected or an infected area to an area which is neither a suspected nor an infected area.

Destruction of cattle on infected area.

6. The Commissioner of Lands may cause to be destroyed any cattle whether infected with disease or not which have been brought on to an infected area enclosed by a fence erected under this Ordinance after such enclosure is complete.

General powers of Commissioner of Lands.

7. The Commissioner of Lands shall have all the following powers in addition to the powers conferred by any other section of this Ordinance:

(a) to cause the carcasses and hides of any cattle which have been destroyed or have died from disease to be buried on any land;

‡(b) to cause any cattle before and after removal from a suspected area under section *five* to be dipped sprayed or otherwise disinfected and to be branded in a manner prescribed by regulations under this Ordinance;

(c) to establish places for the slaughtering of cattle which may be destroyed under the powers conferred by this Ordinance;

(d) to prescribe routes on which cattle shall be driven when removed under section *five* and close such routes or to suspend the traffic of cattle within any area to be notified by him in the *Gazette* and by notice posted on the door of the office of the resident magistrate or assistant resident magistrate;

(e) to cause the grass on any farm or land † *or any cattle kraals* within any infected or suspected area to be burned after the destruction or removal of any cattle thereon or therefrom under this Ordinance;

(f) to enter upon any land for the purpose of exercising the powers by this Ordinance conferred;

* Words in italics inserted by Act No. 10 of 1908, sec. 4.

‡ See note to sec. 8.

† Words in italics inserted by Act No. 10 of 1908, sec. 5.

(g) to exempt from the operation of sections *five* and *six* cattle kept for the purpose of giving milk for domestic consumption on condition that such cattle are kept in a stable or other building or structure approved by the Commissioner.

§8. The Lieutenant-Governor may from time to time make alter or repeal regulations for any of the following purposes: Power to make regulations.

(a) the mode of destruction of cattle under this Ordinance;

(b) the mode of dipping spraying and branding cattle and of the burial of the carcasses and hides of cattle;

(c) the disinfecting of routes along which cattle have been driven;

(d) the rate of compensation to be paid to owners of cattle by reason of the exercise of the powers given under subsection (b) of the last preceding section of this Ordinance.

9. *Repealed by Act No. 10, 1908, section nine.*

10. Any compensation payable under the last preceding section and all expenditure incurred in the carrying out of the provisions of this part of the Ordinance shall be payable out of moneys voted by the Legislative Council. Compensation.
Expenditure to come out of public moneys.

11. Any person who Penalties.

(a) shall neglect to report the outbreak of disease on any farm or land as provided by section *four* immediately after such fact shall come to his knowledge;

(b) shall obstruct or hinder the Commissioner of Lands in the exercise of any powers by this Ordinance conferred;

(c) shall bring or cause to be brought any cattle into an infected area or interfere with any cattle which have been removed from an infected or suspected area under section *five*;

(d) shall act in contravention of any condition or restriction relating to the keeping or removal of cattle imposed under this Ordinance;

shall be liable on conviction to a penalty not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months * or in the case of a second or subsequent conviction to both such fine and imprisonment.

12. It shall be lawful for any person to remove for slaughter cattle from infected or suspected areas on the written permission of the Commissioner of Lands which shall be given on the following conditions only— Temporary provision.

(a) that such cattle are first sprayed washed or dipped to the satisfaction of the Commissioner of Lands;

(b) that such removal be along an approved route to the place of slaughter;

§ As to regulations, see Govt. Notices Nos. 1004 of 1905 (*Gazette*, 24/11/05) 213 of 1907 (*Gazette*, 15/2/07), 746 of 1907 (*Gazette*, 5/7/07). As to compulsory branding of cattle in different districts, see Govt. Notices Nos. 32 of 1908 (*Gazette*, 10/1/08), 197 of 1908 (*Gazette*, 21/2/08), 728 of 1908 (*Gazette*, 7/8/08), 901 of 1908 (*Gazette*, 28/9/08), 48 of 1909 (*Gazette*, 8/1/09), 741 of 1909 (*Gazette*, 9/7/09), 975 of 1909 (*Gazette*, 27/8/09), 976 of 1909 (*Gazette*, 27/8/09), 1341 of 1909 (*Gazette*, 26/11/09), 1439 of 1909 (*Gazette*, 24/12/09), 331 of 1910 (*Gazette*, 8/4/10).

* Words in italics inserted by Act No. 10 of 1908, sec. 6.

(c) that upon reaching the place of slaughter the cattle be securely kept in approved kraals and slaughtered within ten days from date of leaving such area aforesaid.

The provisions of this section shall continue in force in any infected or suspected area for a period of four months only from the date of the notice declaring such area to be infected or suspected.

PART II.

† FENCING OF FARMS, ETC.

Power of Commissioner of Lands to cause fences to be erected on farms native locations and town lands.

13. (1) For the purpose of preventing the spread of the disease and notwithstanding anything in the Fencing Ordinance 1904 contained the Commissioner of Lands may cause to be erected fences along the boundaries of any farms within an infected or suspected area or of any native location or of any town lands within such area.

(2) The term "fence" in this and the following sections of this Ordinance shall have the same meaning as is assigned to it in the Fencing Ordinance 1904.

(3) The specifications of any such fence shall be determined by the Commissioner of Lands.

Cost of erection of fences on boundaries of farms and repayment of same by owners.

*14. (1) The cost of erecting any fence along the boundaries of any farm shall be in the first instance defrayed out of moneys voted by the Legislative Council; provided that such cost shall be repaid together with interest at the rate of three per cent. per annum by equal yearly instalments commencing two years after the fencing is completed such instalments being so calculated and fixed that the said cost and interest shall be wholly repaid within a period of ten years from the date from which the first instalment becomes due as shown in the First Schedule to this Ordinance.

(2) Such repayments of cost and interest shall be made by the owner of any farm fenced under the last preceding section or if the fence divides the farms of adjoining owners then each such owner shall pay one-half the cost of the part of the fence dividing such farms together with the interest aforesaid.

(3) The term "owner" in this and the following sections shall mean the person registered as the owner in the office of the Registrar of Deeds and the term "farm" shall include any portion of a farm.

Notification to Registrar of Deeds of amount due and noting of such amount in land register.

§ 15. (1) *The Minister of Agriculture shall notify in writing to the Registrar of Deeds the total amount of cost and interest to become due from any owner under section fourteen and the Registrar of Deeds shall upon receipt of such notification cause a note thereof to be made in the land register against the title to the farm which has been fenced as aforesaid. The Registrar of Deeds shall further transmit to the*

† See Act No. 12 of 1908.

* See, however, Act No. 26 of 1909, sec. 6, which modifies above sec. 14.

§ This section substituted by Act No. 17 of 1907, sec. 1.

Minister of Agriculture a certificate setting forth such amount and the date of the said note in the land register. Until such note has been deleted in accordance with sub-section (2) of this section no transfer or mortgage of such farm shall be registered (except upon the order of a competent court) without the consent in writing of the Minister of Agriculture who may in giving such consent attach conditions for the transfer of the liability for the amount aforesaid to the transferee or for the priority of the charge noted over any such mortgage as the case may be.

(2) *The Registrar of Deeds shall delete such note as soon as the Minister of Agriculture shall have notified in writing to him that the total amount due under section fourteen from the owner has been paid.*

*16. Where any such farm aforesaid held under lease has been enclosed by a fence erected under this Ordinance during the term of the lease the lessor shall be entitled to receive from the lessee as from the date when such farm became so enclosed a payment of eight per cent. per annum on any sum he may have paid to the Commissioner of Lands under section *fourteen* and such payment shall be made with the rent of the farm and shall be deemed in law to be part of such rent.

Payment by lessee to lessor of farm fenced under Ordinance.

*17. Whenever the Commissioner of Lands shall have incurred any cost in respect of the fencing of a native location under this Ordinance the occupiers of huts in such location shall be liable to contribute pro rata to such cost as if such occupiers were owners of farms as mentioned in section *fourteen* save and except that the amounts due by way of yearly instalments and the interest thereon from each such occupier under this section may be recovered in the event of non-payment as if the same were a tax due and payable under the provisions of the Native Tax Ordinance 1902.

Payment of cost of fencing native locations.

*18. Whenever the Commissioner of Lands shall have incurred any cost in respect of the fencing under this Ordinance of any town lands which have become vested in any local authority under the Town Lands Ordinance 1904 the cost shall be repayable by such local authority in manner provided by sub-section (1) of section *fourteen* of this Ordinance.

Payment of cost of fencing town lands.

19. Nothing in sections *fourteen* to *eighteen* inclusive contained shall be deemed to prevent any person liable for the cost of the erection of a fence under this Ordinance from contributing approved material or labour or transport towards the cost of such fence and any such contribution shall be set off against the amounts mentioned in the said sections respectively according to a value to be determined in the absence of agreement by the resident magistrate of the district.

Contributions in kind towards fencing of farms.

20. The Commissioner of Lands may cause to be fenced :
(1) any roads whether public or private traversing any part of the Colony ;
(2) any boundaries of the Colony or any area in the Colony marked off from any other part of the Colony ;

Power to Commissioner to fence off roads boundaries of Colony and areas of Colony

* See Act No. 26 of 1909, sec. 6.

and the cost of any fence erected under the powers of this section shall be defrayed entirely out of the moneys voted by the Legislative Council for the purposes of this Ordinance.

21. *Repealed by Act No. 26, 1909, section seven.*

Application of provisions of Fencing Ordinance 1904 as to offences and as to repairs of fences. Title.

22. This Ordinance may be cited as the Cattle Disease (East Coast Fever) Ordinance 1904 and the provisions thereof shall be deemed to be additional to and not restrictive of the provisions of any other law for the prevention of disease amongst cattle.

FIRST SCHEDULE.

Table of equal instalments at the end of each year for ten years corresponding to the amounts payable under section *fourteen* of this Ordinance.

Amount payable.	Equivalent amounts payable at the end of each year for ten years.
£	£ s. d.
1	0 2 4
2	0 4 8
3	0 7 0
4	0 9 5
5	0 11 9
6	0 14 1
7	0 16 5
8	0 18 9
9	1 1 1
10	1 3 5
20	2 6 11
30	3 10 4
40	4 13 9
50	5 17 2
60	7 0 8
70	8 4 1
80	9 7 6
90	10 11 0
100	11 14 5
200	23 8 10
300	35 3 2
400	46 17 7
500	58 12 0

Yearly instalments for any sum not mentioned in this Schedule, such as £465. 15s. 0d., may be obtained as follows:—

£ s. d.	£ s. d.
400 0 0	46 17 7
60 0 0	7 0 8
5 0 0	0 11 9
0 15 0 or $\frac{3}{4}$ of £1.	0 1 9
£465 15 0	£54 11 9

SECOND SCHEDULE.

Repealed by Act No. 10, 1908, section nine.

No. 39 of 1904.]

[Promulgated 26th August, 1904.

ORDINANCE

To AMEND LAWS No. 3 OF 1871 AND No. 3 OF 1897.

Assented to 15th August, 1904.

WHEREAS it is expedient to amend in certain respects the laws relating to the marriages of both white and coloured persons ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. Article *eighteen* of Law No. 3 of 1897 shall be and is hereby repealed and the following provision substituted therefor :—

Repeal of article 18 of Law No. 3 of 1897.

For text, see Law No. 3, 1897, article eighteen.

2. Article *eleven* of Law No. 3 of 1871 shall be and is hereby repealed.

Repeal of article 11 of Law No. 3 of 1871.

* 3. Article *nineteen* of Law No. 3 of 1871 as amended by Volksraad Resolution article 117 of 7th June 1876 and article *fourteen* of Law No. 3 of 1897 shall be and are hereby repealed and from and after the date of the taking effect of this Ordinance a fee of five shillings shall be paid before the solemnization of any marriage to the resident magistrate if the marriage is to be solemnized under Law No. 3 of 1871 or in case the marriage is to be solemnized under Law No. 3 of 1897 to the person who in accordance with article *two* thereof has been appointed to solemnize marriages between coloured persons.

Amendment of Law No. 3 of 1871 and Law No. 3 of 1897 as to marriage fees.

*Act 3
1903*

4. This Ordinance may be cited as the Marriage Law Amendment Ordinance 1904. Title.

* As to payment of marriage fee, see Act No. 13 of 1909, sec. 8.

No. 40 of 1904].

[Promulgated 26th August, 1904.]

†ORDINANCE

TO FURTHER AMEND THE STAMP DUTIES AMENDMENT
PROCLAMATION, 1902.

Assented to 15th August, 1904.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Mode of affixing and defacing of stamps in case of notarially executed instruments.

‡1. (1) Whenever any notarially executed instrument is chargeable with stamp duty under the Stamp Duties Amendment Proclamation 1902 or any other law the stamps denoting such duty shall be affixed at or before execution of such instrument to the original or the first grosse thereof or in the case of any such instrument executed in duplicate or triplicate to such duplicate original or triplicate original and such stamps shall be duly defaced by the notary before whom such instrument aforesaid is executed

(2) Whenever any such instrument aforesaid shall be registered in any registration office the original or first grosse or duplicate original (as the case may be) shall be filed with the registration officer bearing the stamps affixed as aforesaid and such registration officer shall endorse on the other grosse or triplicate original (as the case may be) lodged for registration a certificate that the instrument filed with him as aforesaid bears the stamps required by law.

(3) A notarially executed instrument shall for the purposes of this section include also any such instrument as is mentioned in section *thirty-seven* of the Deeds Proclamation 1902.

Power to Colonial Treasurer to make rules as to defacement of stamps by registration officers or bankers.
Amendment of section *fourteen* of Proclamation Transvaal No. 12 of 1902.

2. Notwithstanding anything contained in section *thirteen* of the Stamp Duties Amendment Proclamation 1902 or any law amending the same any registration officer or other officer of any department of the Public Service charged with the duty of defacing stamps or any banker may deface the stamps on any instrument in such manner as may be from time to time prescribed by the Colonial Treasurer by *regulations published under notice in the *Gazette*.

3. Section *fourteen* of the said Proclamation shall be and is hereby amended

(a) by the insertion in sub-section (1) thereof immediately after the word "instruments" of the words "other than notarially executed instruments";

† See Ord. No. 16 of 1905, Act No. 15 of 1909.

‡ See Act No. 15 of 1909, sec 5. (1).

* For regulations made under this section see Govt. Notice No. 475 of 1906 (*Gazette*, 18/5/06).

(b) by the omission from sub-section (2) thereof of the words "other than such as are included in the last preceding sub-section".

4. (1) Notwithstanding anything in sections *thirteen fourteen seventeen* or *twenty-four* of the said Proclamation contained whenever any bill of exchange or promissory note liable to stamp duty has been executed and delivered without being duly stamped or if any stamp affixed thereto has not been duly defaced as required by law such instrument may be duly stamped or any stamp affixed thereto may be duly defaced by the acceptor of such instrument or by any banker within a period of three days after any such instrument shall have come into the hands of such person and such person shall thereupon be deemed to be a person required by law to stamp such instrument and shall be liable to any penalty prescribed by the said Proclamation for any omission or neglect to stamp such instrument or deface the stamps thereon within the period mentioned in this section.

Amendment of Proclamation Transvaal No. 12 of 1902 as to affixing and cancelling of stamps on bills of exchange.

(2) Any such instrument upon which any stamp has been affixed or defaced as in this section mentioned shall thereupon be an instrument duly stamped; provided that nothing herein contained shall exempt the drawer or maker of any such instrument from the duty imposed by the said Proclamation of duly stamping or duly defacing the stamps upon any such instrument or from any penalty imposed by law for neglect of any such duty.

5. Section *sixteen* of the said Proclamation shall be and is hereby amended by the addition of the following proviso to sub-section (3) thereof—

"provided always that if the amount of such penalty exceeds twenty pounds the Colonial Treasurer may remit any part of the amount which exceeds the said sum."

Amendment of section *sixteen* of Proclamation Transvaal No. 12 of 1902.

6. The Second Schedule to the said Proclamation shall be and is hereby amended

(1) *Repealed by Ordinance No. 16, 1905, section eleven;*
 (2) by the repeal of paragraphs (2) (3) and (4) under the head power of attorney and the substitution of the following provisions:

Amendment of Second Schedule of Proclamation Transvaal No. 12 of 1902.

(2) *Superseded by Act No. 15, 1909, Third Schedule.*

(3) *Superseded by Act No. 15, 1909, Third Schedule.*

(4) *Superseded by Act No. 15, 1909, Third Schedule.*

(5) *Superseded by Act No. 15, 1909, Third Schedule.*

(6) *Superseded by Act No. 15, 1909, Third Schedule.*

(7) a power of substitution shall be subject to duty in like manner as a power of attorney.

(8) The stamps on powers granted by more than one mandant may be cancelled by any one of them."

7. Section *four* sub-section (b) of the Stamp Duty Further Amendment Ordinance 1902 shall be and is hereby amended by the repeal of the substituted words in the said sub-section and by the insertion of the following in lieu of such words:—

Amendment of section *four* of Ordinance No. 14 of 1902.

“Notarial instrument or duplicate or triplicate original thereof not being in itself chargeable with stamp duty: or grosse or copy of such notarial instrument: or notarial attestation of any instrument or of any grosse duplicate or copy thereof—2s. 6d.”

Exemption
from duty of
Government
instruments.

8. No duty or fees payable in stamps shall be chargeable in respect of any instrument or the registration thereof if the duty or fees thereon would be paid and borne by the Colonial Government or by any department thereof and the Colonial Treasurer shall determine in case of dispute whether an instrument is exempt from duty or fees under this section and his decision shall be final.

Interpreta-
tion of terms.

9. In this Ordinance the terms “bill of exchange” and “promissory note” shall have the same meanings as are assigned to them respectively by sections *twenty* and *twenty-one* of the Stamp Duties Amendment Proclamation 1902 and the term “banker” shall include a body of persons whether incorporated or not who carry on the business of banking in this Colony and any manager or deputy-manager or other official in the employ of such body of persons and acting in such capacity.

Title.

10. This Ordinance may be cited for all purposes as the Stamp Duties Amendment Ordinance 1904 and shall be read as one with the Stamp Duties Amendment Proclamation 1902 the Stamp Duties Further Amendment Ordinance 1902 and any law amending the same.

*B. Ord. 9 of 1912
The whole except Sect
Sec 26 & Sect 28*

No. 41 of 1904.]

[Promulgated 26th August, 1904.

***ORDINANCE**

TO AMEND THE MUNICIPAL CORPORATIONS ORDINANCE 1903 IN CERTAIN RESPECTS.

Assented to 17th August, 1904.

WHEREAS it is expedient that certain local authorities heretofore described as urban district boards should be constituted municipalities but elected under special provisions and that the Municipal Corporations Ordinance 1903 be amended accordingly and in certain other respects:

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. In this Ordinance the term "principal Ordinance" shall mean the Municipal Corporations Ordinance 1903; and the term "magistrate" shall mean the resident magistrate of a magisterial district in which a municipality is situate and in the case of any municipality being situate within a portion of a magisterial district for which a detached assistant resident magistrate has been appointed the term "magistrate" shall include also such detached assistant resident magistrate.

Interpretation of terms

PART I.

CONSTITUTION OF URBAN DISTRICT BOARDS AS MUNICIPALITIES.

2. Sections *seventy-three* and *seventy-four* of the principal Ordinance shall be and are hereby repealed and all Proclamations issued under the said section *seventy-three* are hereby declared to be no longer of force and effect save as herein provided.

Repeal.

3. Every urban district board established by the Lieutenant-Governor under the powers of the said section *seventy-three* and named in the Schedule hereto shall from the date of the passing of this Ordinance be a council of a municipality and the town or area for which any such board has been established shall from the said date be deemed to be an existing municipality coming under the operation of the principal Ordinance and the provisions of section *four* as well as all other provisions of the principal Ordinance shall apply to such town or area save and except

Urban district boards constituted municipalities.

(a) that the members of every such board and the chairman thereof then in office shall continue in office

* Provisions of this Ordinance do not apply to Johannesburg in terms of Ord. No. II (Priv.) of 1906, sec. 95 (4); see also Ord. No. 17 of 1905, Ord. No. 26 of 1906.

under the provisions of Proclamation No. 52 (Administration) of 1903 until the date of retirement as mentioned in section *nine* of this Ordinance;

(b) that elections hereafter held of the members of councils of municipalities constituted by this section shall be conducted as in sections *four* to *twelve* of this Ordinance provided and not as provided by sections *twenty-one* to *fifty-two* inclusive of the Municipalities Elections Ordinance 1903 unless the Lieutenant-Governor shall exercise the powers on him conferred by sub-section (*d*) of this section of this Ordinance;

(c) that a mayor shall not be appointed by the council of any municipality constituted by this section but in lieu thereof a chairman shall be elected by each such council as in section *fourteen* of this Ordinance is provided unless the Lieutenant-Governor shall exercise the powers on him conferred by section *sixteen* of this Ordinance; provided always that all duties imposed and all powers privileges and jurisdiction conferred upon a mayor of a municipality by the principal Ordinance or by any other law shall be and are hereby imposed and conferred upon a chairman of a municipality elected under section *fourteen* of this Ordinance or under Proclamation No. 52 (Administration) 1903;

(d) that no such municipality as is constituted under this section nor any other municipality hereafter constituted shall be divided into separate districts or wards unless the Lieutenant-Governor by Proclamation in the *Gazette* shall declare that any such municipality shall be so divided and thereupon the provisions of section *sixteen* and Chapters V and VI of the Municipalities Elections Ordinance 1903 shall apply* in a municipality so divided into separate districts or wards.

Mode of election of councils of municipalities constituted under this Ordinance.

†4. Elections of councils of municipalities constituted under section *three* of this Ordinance shall be held on any day between the twentieth and thirtieth days inclusive of the month of September preceding the day on which the councillors go out of office as provided by section *nine* of this Ordinance. Such date shall be fixed by the magistrate and notified as is provided by the next succeeding section for notifying meetings for the nomination of candidates.

Notice of meeting of electors to nominate candidates.

5. (1) Not less than fourteen days before the date of election fixed as aforesaid the magistrate shall issue a notice and publish the same in some newspaper (if any) printed and published in the municipality and by affixing such notice to the principal door of the magistrate's court-house and such other public places within the municipality as he shall deem convenient. Such notice shall summon a public meeting of the persons enrolled upon the voters roll of the municipality for the purpose of nominating persons for election as

* See Proc. (Adm.) No. 70 of 1904 as to Roodepoort-Maraisburg.

† As to sections 4-12 see Ord. 17 of 1905, sec. 6, and Ord. No. 26 of 1906, sec. 6.

councillors and such meeting shall be held on a date not less than seven and not more than ten days prior to the day fixed for holding the election of members.

(2) Every such notice shall specify the hour and place within the municipality at which such meeting is to be held and such meeting shall be held at the hour and place specified in the notice.

6. At every such meeting as in the last preceding section mentioned the magistrate shall attend at the time and place named in the notice thereof and shall preside at such meeting.

Magistrate to preside at meeting.

7. It shall be lawful for any person enrolled upon the voters roll of the municipality and present at such meeting to nominate some person possessing the qualifications prescribed in section *two* of the Municipalities Elections Ordinance 1903 and every such nomination shall before it is submitted to the meeting be seconded by some other person enrolled upon the voters roll of the municipality and present at such meeting. If the number of persons nominated as aforesaid be no more than the number of councillors to be elected and if every such person shall at the meeting personally or in writing signify his acceptance thereof the magistrate shall then and there declare such persons nominated as aforesaid to be elected but if every such person shall not so signify his acceptance or if the number of persons nominated as aforesaid be more than the number of councillors to be elected such meeting shall then be adjourned to the date fixed for holding the election of councillors.

Nomination of candidates for election.

8. (1) At every such adjourned meeting the magistrate shall preside and at or before such meeting it shall be competent for any person nominated and seconded as aforesaid to give written notice to the magistrate of his intention to withdraw from election. After such withdrawal if in any case there shall remain nominated and seconded no more persons than there are members to be elected such persons shall be declared duly elected but in case more persons shall have been nominated and seconded than the number to be elected the magistrate shall then and there proceed to take a poll of the enrolled voters in manner hereinafter described.

Mode of holding election.

(2) The magistrate shall read out to the meeting a list of the persons nominated and seconded as aforesaid. Each voter present at the adjourned meeting shall in turn come to the desk where the magistrate is sitting and on satisfying the magistrate that his name is on the voters roll for the municipality and that he has not already voted at the election then being held shall record on a slip of paper to be handed to the voter by the magistrate such of the names of the persons nominated for whom he wishes to vote not exceeding the number of persons to be elected. The voter shall then hand in the paper on which his votes are so recorded to the magistrate and the magistrate shall perforate the same with a perforating stamp and deposit it in a box provided for the purpose. Such adjourned meeting shall be closed at the

expiration of three hours from the hour specified in the notice aforesaid unless there shall be any enrolled voter present who shall not have recorded his vote; in which case the magistrate shall have power to prolong the meeting until such voter shall have recorded his vote.

(3) The magistrate shall then open the box and proceed to count the votes so recorded and shall declare the names of the persons who have been elected in order according to the number of votes recorded for them. In the event of the number of votes being found to be equal for any two or more candidates all of whom cannot be declared elected the magistrate shall by lot determine which shall be declared elected. The magistrate shall then enclose the voting papers in a sealed packet and shall retain possession of the same and shall after a period of three months destroy the contents of it. The magistrate shall not at any time disclose the manner in which any voter has recorded his vote.

Date of retirement of first members and subsequent elections.

9. The councillors who were members of the urban district boards mentioned in the schedule hereto shall go out of office on the day prescribed by Proclamation No. 52 (Administration) 1903 as the date for the retirement of first members and in place of such councillors so going out of office a like number of other councillors shall be elected as hereinbefore provided and shall come into and remain in office during the next ensuing two years and at the expiration of such period of two years shall in like manner go out of office and be succeeded by other councillors elected as hereinbefore provided for a like term of two years and so on; provided always that any retiring councillor may be re-elected.

Casual vacancies

10. In case any councillor shall die or become disqualified from office or shall resign or refuse to accept the office of councillor or in the case of any casual vacancy occurring in any other manner whatever in such office the chairman of the council shall notify such vacancy to the magistrate and the magistrate shall except in the circumstances mentioned in the first proviso to this section forthwith summon a meeting of enrolled voters for the municipality for the purpose of filling up such vacancy in the manner hereinbefore mentioned and the person then elected shall hold office until the next general election of councillors; provided always that if any such vacancy shall occur within three months prior to the first day of October in the year in which the councillors go out of office such vacancy shall not be filled but shall continue until the holding of the next general election; provided further that if there shall be more than three such vacancies they shall be filled up at a special election held for the purpose and conducted in manner hereinbefore provided.

Provisions in case of elections irregularly held.

11. (1) It shall be competent for any voter to apply to the Supreme Court or to the Witwatersrand High Court or any Circuit Court (if such High Court or Circuit Court have jurisdiction in the matter) to have any election under this Ordinance set aside on the ground that such election has not

been held in accordance with the provisions of this Ordinance; provided that no objection to any election shall be entertained by any such court unless notice thereof has been lodged with the magistrate within seven days after such election. Such notice shall state the grounds of the objection.

(2) If any election shall be so set aside or if by reason of any failure or neglect or any other cause whatever any meeting for the election of councillors shall not be held then and in every such case the magistrate shall as soon as possible after any such event or failure shall have been notified to him call such meetings of electors for the purposes of nominating and electing a councillor in manner hereinbefore provided.

12. If from any cause there shall not be elected the requisite number of councillors at any such election aforesaid in manner provided it shall be lawful for the Lieutenant-Governor to appoint any person or persons to be a councillor or councillors in order to make up the number of members required for the council.

Provisions in case of failure to elect members.

*13. The Lieutenant-Governor may fix and from time to time increase or decrease the number of councillors of any municipality the elections whereof are conducted under the provisions of sections *four to twelve* inclusive of this Ordinance and every such increase or decrease shall be notified by Proclamation in the *Gazette*.

Fixing the number of members.

14. At the first meeting of the council held after any general election of councillors under this Ordinance the councillors present shall elect one councillor to be chairman of the council and he shall forthwith enter upon his office and continue therein until his successor be appointed after the next general election of members unless his office be sooner vacated and in case of such vacancy then a successor shall at the next meeting of the council after such vacancy is notified be chosen by the members present at such meeting from amongst the members of the council and such successor shall forthwith enter upon his office and continue therein for the remainder of the period for which the vacating chairman was elected; provided always that should a chairman for any reason not be elected at a meeting as herein provided he may be elected at the first ordinary meeting of the council held thereafter or at a special meeting called for the purpose.

Chairman of the council.

15. At any meeting of the council at which an election of a chairman is to be held under the last preceding section the members present at the commencement of such meeting shall elect one of their number to act as chairman until a chairman be elected as aforesaid. In case of an equality of votes on any election of chairman under the last preceding section the acting chairman shall have a casting vote as well as an original vote.

Acting chairman to be chosen to preside at meeting till chairman elected.

* For increase or reduction of members, see Proc. (Admn.) 80 of 1904 (Carolina, Ermelo, Piet Retief, Vereeniging, and Wakkerstroom); No. 87 of 1905 (Bethal); No. 88 of 1905 (Carolina); No. 36 of 1906 (Lydenburg); No. 110 of 1906 (Springs); No. 73 of 1909 (Spring); No. 38 of 1910 (Wolmaransstad); No. 18 of 1910 (Witbank).

16. *Repealed by Ordinance No. 26, 1906, section six (3).*

Power to Lieutenant-Governor to provide for election of mayor by municipalities constituted under section three and conversely.

Power of auditor to recover payments made without due authority.

Power to Lieutenant-Governor to alter the boundaries of municipalities.

Power to council to erect public buildings on squares and open spaces.

Amendment of section thirty-four of Ordinance No. 58 of 1903.

Amendment of section thirty-seven of Ordinance No. 58 of 1903.

to act 21 of 1923

PART II.

GENERAL AMENDMENTS.

†17. Section *thirty* of the principal Ordinance shall be and is hereby repealed and there shall be substituted therefor the following provisions:—

For text, see Ordinance No. 58, 1903, section thirty.

18. Section *six* of the principal Ordinance shall be and is hereby amended by the addition of the following new subsections:—

For text, see Ordinance No. 58, 1903, section six (7) (8) and (9).

19. Notwithstanding anything in section *thirty-four* of the principal Ordinance contained the council shall have power with the consent of the Lieutenant-Governor to erect and maintain on any square or other open public place buildings for public purposes or set apart any such open public place or portion thereof for any such buildings.

The provisions of this section shall apply to every municipality whether brought under the operation of this Ordinance or not.

20. Section *thirty-four* of the principal Ordinance shall be and is hereby amended by the omission of all words in the said section after the words “if it shall be necessary” and by the substitution for the words so omitted the following words:—

“may carry any sewers drains pipes and water-furrows through and across any private property provided that compensation shall be made by the council for any damage done thereby the amount of which compensation shall if not mutually agreed upon be determined in manner provided by the Municipalities Powers of Expropriation Ordinance 1903.”

21. Section *thirty-seven* of the principal Ordinance shall be and is hereby amended by the omission from the said section of all words after the words “reside within such locations” and by the addition of the following words to the said section so amended:

“The Lieutenant-Governor may from time to time make alter and repeal regulations;

†“(1) for the proper carrying out of the provisions of this section and the effectual supervision of such locations;”

† For Proc. (Adm.) and Govt. Notices issued under this section, see notes to Ord. No. 58 of 1903, sec. 11.

‡ For regulations, see Chronological Table.

(2) *Repealed by Act No. 18, 1909, section one.*

Any such regulations made under this section shall be of full force and effect as law within the municipality on publication of the same in the *Gazette*.

Any bye-laws in force in any municipality or district of an urban district board at the date of the passing of this Ordinance for the purposes described in sub-section (2) of this section shall be deemed to be regulations made by the Lieutenant-Governor under the said sub-section (2).

§22. The council shall have the power to receive into any pound which it has established under the principal Ordinance any animal which may be lawfully impounded under the provisions of Law No. 2 of 1882 outside the limits of the municipality. The Lieutenant-Governor may from time to time make alter and repeal regulations

Power to receive into municipal pounds animals from without the municipality.

- (1) for the management of pounds by the council;
- (2) for fixing and defining the charges payable by the owners of impounded animals;
- (3) as to the conditions under which impounded animals may be sold by the council; and
- (4) as to the transfer of property in such animals on such sale.

Any bye-laws in force in any municipality or district of an urban district board at the date of the passing of this Ordinance for the purposes described in this section shall be deemed to be regulations made by the Lieutenant-Governor under this section.

23. Section *forty* of the principal Ordinance shall be and is hereby amended by the addition thereto of the following sub-sections:—

Amendment of section *forty* of Ordinance No. 58 of 1903.

For text, see Ordinance No. 58, 1903, and No. 40 (13) and

(14). 24. Section *forty-one* of the principal Ordinance shall be and is hereby amended by the addition thereto of the following sub-section:—

Repeal of section *forty-one* of Ordinance No. 58 of 1903.

For text, see Ordinance No. 58, 1903, section forty-one

(10). 25. It shall be the duty of the council of every municipality whether brought under the operation of this Ordinance or not to provide for the burial of destitute persons dying within the limits of the municipality and the council is hereby authorized and empowered to incur any expenditure necessary therefor.

Duty to bury paupers.

26. Section *forty-two* of the principal Ordinance shall be and is hereby amended

Amendment of section *forty-two* of Ordinance No. 58 of 1903.

- (a) by the addition at the end of sub-section (1) of the words "except as regards pounds";
- (b) by the addition to sub-sections (31) and (32) thereof of the words "and for the charging of fees for the examination of any such plans";

§ For pound regulations under this section, see Govt. Notices Nos. 1321 of 1904 (*Gazette*, 23/12/04), 369 of 1907 (*Gazette*, 28/3/07), 498 of 1908 (*Gazette*, 5/6/08), 520 of 1908 (*Gazette*, 5/6/08).

(c) by the addition to sub-section (34) thereof of the words "and for the charging of fees in respect of the holding of such sales";

(d) by the omission of sub-section (48) therefrom;

(e) by the addition of the following new sub-section (50):
For text, see Ordinance No. 58, 1903, section forty-two

(50).

(f) by the addition of the following new sub-section (51):
For text, see Ordinance No. 58, 1903, section forty-two

(51).

27. Section *forty-five* of the principal Ordinance shall be and is hereby repealed and there shall be substituted therefor the following provisions:—

For text, see Ordinance No. 58, 1903, section forty-five.

Repeal of section *forty-five* of Ordinance No. 58 of 1903 and substitution of new section.

Amendment of section *fifty-eight* of Ordinance No. 58 of 1903.

28. Section *fifty-eight* of the principal Ordinance shall be and is hereby amended by the addition after the words "any municipality" in the said section of the words "whether such municipality shall have been brought under the operation of this Ordinance or not."

Amendment of section *fifty-nine* of Ordinance No. 58 of 1903.

29. Section *fifty-nine* of the principal Ordinance shall be and is hereby amended by the omission from such section of all words after the words "municipal boundaries" occurring in sub-section (7) thereof to the end of the said section and by the addition of the following paragraph to the said section:—

For text, see Ordinance No. 58, 1903, section fifty-nine.

Repeal of section *seventy-two* sub-section (1) of Ordinance No. 58 of 1903 and substitution of new provision.

30. Sub-section (1) of section *seventy-two* of the principal Ordinance shall be and is hereby repealed and there shall be substituted therefor the following provisions:—

(1) The provisions of Law No. 2 of 1882 Law No. 8 of 1899 Law No. 8 of 1888 Law No. 3 of 1891 and Law No. 13 of 1894 shall not apply to any pound or market established by the council or to any dogs within the municipality or to pawnbrokers carrying on business within the municipality where and as soon as regulations have been made by the council thereof respectively relating to pounds, markets, dogs or pawnbrokers.

(2) The terms "council" and "municipality" in this section shall include also a council of a municipality or a municipality not subject to or brought under the operation of this Ordinance.

Holders of licences as travelling traders under Law No. 17 of 1899 not entitled to trade thereunder within the municipality.

31. Notwithstanding anything in Law No. 17 of 1899 or in sub-section (3) of section *seventy-two* of the principal Ordinance contained no licence to carry on the business of a travelling trader issued after the taking effect of this Ordinance shall entitle the holder thereof to sell offer or expose for sale within any municipality any goods wares or merchandise and Law No. 17 of 1899 shall be deemed to be amended accordingly.

32. Sub-section (3) of section *seventy-two* of the principal Ordinance shall be and is hereby amended by the addition of the words "proprietors of wayside hotels" immediately after the words "boarding houses" in the said sub-section.

Amendment of sub-section (3) of section *seventy-two* of Ordinance No. 58 of 1903.

33. The council may cause any streets roads or public place in the municipality to be named or any house or other buildings in any such street road or public place to be numbered by putting up or painting in a conspicuous position such names or numbers as the case may be and may from time to time change or alter any name of a street road or public place or number of a house or building whether or not such name or number was put up or painted by the council under the powers of this section. Any person who shall destroy pull down or deface any such name or number or put up or paint or cause to be put up or painted any name or number different from that put up by the council shall be liable on conviction to a penalty not exceeding ten pounds.

Power to name streets and number houses.

* 34. *All property movable or immovable belonging to or vested in or registered in the name of any sanitary committee established in any area prior to the constitution of a municipality under this Ordinance or the principal Ordinance for such area shall belong to the council of such municipality. All such property shall be transferred by registering officers into the name of such council without payment of transfer duty stamp duty or other charges and no licences or arrears licences under Law No. 15 of 1898 shall be payable in respect of any such property.*

Vesting of property of sanitary committees in municipalities.

35. This Ordinance may be cited for all purposes as the Municipal Corporations Amendment Ordinance 1904 and shall be read as one with the principal Ordinance.

Title.

SCHEDULE.

NAMES OF URBAN DISTRICT BOARDS CONSTITUTED MUNICIPALITIES
UNDER SECTION *THREE*.

Amersfoort.	Piet Retief.
Amsterdam.	Potgieters Rust.
Bethal.	Roodepoort-Maraisburg.
Belfast.	Rustenburg.
Carolina.	Schweizer Reneke.
Christiana.	Springs.
Ermelo.	Ventersdorp.
Komatipoort.	Vereeniging.
Lichtenburg.	Volkrsust.
Lydenburg.	Wakkerstroom.
Machadodorp.	Wolmaransstad.
Nylstroom.	Zeerust.

* This section substituted by Ord. No. 17 of 1905, sec. 7.

No. 43 of 1904.]

[Promulgated 26th August, 1904.]

ORDINANCE

TO REPEAL CERTAIN VOLKSRAAD RESOLUTIONS OF THE LATE
SOUTH AFRICAN REPUBLIC.

Assented to 17th August, 1904.

WHEREAS it is desirable to amend First Volksraad Resolution article 58 dated 10th May 1890 and First Volksraad Resolution article 150 dated 20th May 1890.

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. First Volksraad Resolution article 58 dated 10th May 1890 shall be and is hereby repealed.

Repeal of
First
Volksraad
Resolution
article 58
dated 10th
May 1890.

2. The provisions of First Volksraad Resolution article 150 dated 20th May 1890 shall not apply to any railway constructed with the consent of the Inter-Colonial Council under section *fifteen* of the Inter-Colonial Council South Africa Order in Council 1903.

Amendment
of First
Volksraad
Resolution
article 150
dated 20th
May 1890.

Title.

3. This Ordinance may be cited as the Railway Construction Prohibition Law Amendment Ordinance 1904.

No. 44 of 1904.]

[Promulgated 26th August, 1904.]

ORDINANCE

TO PROVIDE FOR THE PROCLAMATION AND ESTABLISHMENT AND DEFINITION OF PUBLIC ROADS WITHIN THE DISTRICTS OF LOCAL AUTHORITIES.

Assented to 17th August, 1904.

WHEREAS all original titles to farms in this Colony as granted by the Government of the late South African Republic are made subject to the condition that all roads leading over such farms made by lawful authority shall remain free and unobstructed;

And whereas it is desirable to define and amend the powers of the Government with reference to the establishment proclamation and definition of public roads over land within the jurisdiction of local authorities in accordance with the aforesaid conditions;

And whereas it is desirable where any public road passes over ground held under a mining title that provision should be made for the closing and diversion of such road for purposes connected with the working of precious and base metals;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

GENERAL.

1. In this Ordinance unless inconsistent with the context "local authority" shall mean the council of any municipality;

Interpretation of terms.
- "public road" shall mean any road vested in any local authority;
- "land" shall mean and include land or other fixed property of any tenure and land held under claim licence mynpatch or other mining title.
2. Where any notice order or other document is required by this Ordinance to be served on or given to any person it shall either be served personally on such person or left at or sent by post to his last usual place of abode or business; and in case any such person shall be absent from this Colony any such notice order or document shall be served on any agent of such person.

Notices.
3. Any person failing to give or to comply with any such notice or order shall be deemed to have committed a breach of this Ordinance.

Failure to give or comply with notice.

PART I.

THE PROCLAMATION AND DEFINITION OF PUBLIC ROADS.

Petition to the Lieutenant-Governor for the establishment of public roads.

*4. It shall be lawful for the Lieutenant-Governor upon the petition of any local authority to establish public roads within the area of such authority by a proclamation published in three successive issues of the *Gazette*; provided always that no such public road shall be proclaimed over erven or over building lots or stands in townships shown on plans filed with the Registrar of Mining Rights or over mining stands held under licences duly registered. Such petition shall contain an accurate description of the course situation and width of the proposed road and shall indicate the general nature of the ground over which it is to run and whether the same consists of arable or grazing land or is cultivated or planted with trees or otherwise improved and what are the interests of the owners lessees or occupiers of such land and shall be accompanied by a diagram or sketch plan showing the course of such road. A copy of the said petition and of the diagram accompanying the same shall be deposited at the offices of the petitioning local authority and shall be open to the inspection of all persons.

Notification of such petition to the public and persons concerned.

5. After the said petition and diagram have been sent to the Lieutenant-Governor and deposited at the offices of the petitioning local authority such authority shall forthwith proceed to notify all persons interested that a petition for the proclamation of a public road has been sent to the Lieutenant-Governor. Such notification shall be

(a) by the publication in eight successive issues of the *Gazette* and once a week for eight successive weeks in some newspaper circulating within the area of the local authority of an advertisement which shall set forth the general course and situation of the proposed road and shall refer to the petition and diagram deposited at the offices of the local authority as aforesaid and shall call upon all persons interested to lodge objections to the proclamation of the proposed road in writing in duplicate with the Colonial Secretary and the local authority within one month of the latest publication of the said advertisement; and

(b) by serving on every owner and lessee of any land through which the proposed road is to run a notice defining the course and situation of such road in so far as the same affects any such owner or lessee.

For the purposes of this sub-section the term "owner" shall with respect to land under mining title mean the holder of such title and with respect to land held under a stand licence mean the holder of such licence.

†6. If no objections are filed in accordance with sub-section (a) of the last preceding section the Lieutenant-Governor may

Inquiry by the Lieutenant-Governor.

* For proclamations of public roads under this section, see Proc. (Admn.) Nos. 75 of 1907; 26, 62, 64, and 90 of 1908; 22 and 30 of 1909.

† See note to sec. 4.

and if any such objections are so filed the Lieutenant-Governor shall upon due proof of the proper advertisements having been published and notices served appoint some person or persons to make an inquiry on the spot into the propriety of the proposed road and the objections thereto and to report to the Lieutenant-Governor on the matters in respect of which such inquiry was directed and on receiving such report the Lieutenant-Governor may proclaim such road with or without such alterations or modifications as he may think fit subject to the payment of such compensation as is provided for in this Ordinance.

7. All public roads established under the provisions of this part of this Ordinance shall on proclamation thereof vest in the local authority in whose district the same are situated in the same manner and subject to the like provisions and conditions as are provided in section *thirty-four* of the Municipal Corporations Ordinance 1903.

Roads so established vest in the local authority.

8. If at any time it shall appear to the local authority advisable that any public road or portion thereof within its area should be defined such local authority shall deposit a diagram showing the course and situation of such public road or portion thereof and the properties over which it is to pass and accurately defining the width and alignment thereof and shall also deposit a copy of such diagram in the Surveyor-General's office and shall at the same time publish in four successive issues of the *Gazette* and in four issues in four successive weeks of a newspaper circulating within the area of such local authority a description of such public road or portion of a public road together with a reference to the diagram thereof and such road shall thereupon become and remain established according to the course and situation thereof as shown in the said description and diagram subject to the provisions of Part III of this Ordinance and to the payment of such compensation as is provided for by this Ordinance.

Definition by diagram of public road.

9. No person shall erect or maintain a fence across any portion of a public road without the consent of the local authority anything in Law No. 9 of 1893 or any other law to the contrary notwithstanding.

Fencing.

PART II.

COMPENSATION TO PERSONS DAMAGED BY THE PROCLAMATION AND DEFINITION OF PUBLIC ROADS.

10. The following provisions shall apply with respect to the right to or payment of compensation arising out of the proclamation of any new public road or the definition of any existing public road under the provisions of this Ordinance:—

Compensation.

(a) Compensation shall be payable on the amount of damage or diminution in value caused to any house homestead cultivated ground orchard plantation or other

improvement on any land through or over which any such road passes directly and immediately sustained in consequence of the proclamation or definition of such road;

(b) whenever the land taken for any road exceeds one-twentieth of the whole extent of land held under one title compensation shall be payable for the value of the land so taken as well as for any depreciation in value caused thereby to the remaining portion of the land held as aforesaid;

(c) such compensation shall be payable by the local authority concerned and the amount thereof if not agreed on between the parties interested shall be determined by arbitration in manner hereinafter provided.

Arbitration.

11. The Supreme Court shall upon application by the local authority appoint three arbitrators in the manner hereinafter provided to whom shall be referred all questions of disputed compensation under this Ordinance in respect of any new or existing public road and the decision of the majority of whom shall be final. At least thirty days before making such application as aforesaid the local authority shall give notice of its intention to do so in the *Gazette* and in one or more daily newspapers circulating within the area of the local authority and shall publish in such notice a list of one or more persons whose names shall be submitted to the Supreme Court for appointment as arbitrators and any other party interested in the arbitration may appear on such application and propose any other person or persons to the Supreme Court as arbitrators and the Supreme Court shall appoint one arbitrator from the list submitted by the local authority and one from among the persons proposed by the other parties interested and the persons so appointed shall select a third arbitrator provided that if upon such application the local authority or the other parties interested do not propose any fit person or arbitrators or if the arbitrators appointed do not within fourteen days of such appointment select a third arbitrator the Supreme Court shall make the necessary appointments so that the number of arbitrators shall be three and no more; and provided further that in any case in which the compensation claimed shall be under one hundred pounds or in which the local authority and the claimant shall so agree the amount of compensation shall be determined by a single arbitrator to be appointed by the Supreme Court upon application by the local authority after fourteen days' notice in writing to the claimant.

Death or incapacity of any arbitrator.

12. If any arbitrator appointed for the purpose of this Ordinance dies or becomes incapable to act or fails to act for fourteen days after his appointment it shall be lawful for the Supreme Court on the application of the party by whom he was proposed after similar notice to that required in the last preceding section to appoint some other person as arbitrator in place of the person so dying or becoming incapable or failing to act as aforesaid.

13. The arbitrator or arbitrators appointed as aforesaid shall immediately upon his or their appointment as the case may be sit for the hearing and determination of all matters referred to him or them respectively and shall continue so to sit with such adjournments as he or they may from time to time deem fit until all matters referred shall have been heard and determined and it shall be in the discretion of such arbitrator or arbitrators as the case may be to arrange the order in which such matters referred to him or them respectively shall be so heard and determined.

Hearing by arbitrators.

14. An award or decision shall be given by the arbitrator or arbitrators as the case may be in each matter referred and such award shall in each case be given within twenty-one days after the first hearing of evidence in regard thereto or within such extended time (if any) as shall be appointed for that purpose by such arbitrator or arbitrators as the case may be.

Award by arbitrators

15. The said arbitrator or arbitrators may call for the production of any document in the possession or power of either party except any valuation of property or rights expropriated which either party may have made for his own purpose which he or they may think necessary for determining the matter referred and the arbitrator or arbitrators as the case may be may examine the parties or witnesses on oath or affirmation and may administer the oaths necessary for that purpose.

Evidence.

16. The provisions of the Commissions' Powers Ordinance 1902 shall *mutatis mutandis* apply to all proceedings before any arbitrator or arbitrators appointed under this Ordinance as if he or they were a Commission appointed by the Lieutenant-Governor for the purpose of inquiring into the matters referred to him or them under this Ordinance; the summonses for the attendance of witnesses or the production of documents may be signed by any arbitrator.

Provisions of Commissions' Powers Ordinance 1902 to apply to proceedings.

17. The arbitrator or arbitrators as the case may be shall give to each party concerned at least five days' notice of the time when and the place where it is intended to hold any sitting for hearing any evidence or arguments in connection with any particular matter referred.

Notice of sittings.

18. Upon all proceedings before any arbitrator or arbitrators each party may appear in person or by counsel solicitor or admitted law agent and may produce such witnesses and documentary evidence as the arbitrator or arbitrators shall allow.

Appearance of parties.

19. The arbitrator or arbitrators as the case may be shall deliver his or their award in writing to the local authority and such local authority shall retain the same and shall within two days furnish a copy thereof to the other party concerned if he can be found and shall at all times on demand produce the said award and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Inspection of awards.

20. The award of the arbitrator or arbitrators may be made a rule of the Supreme Court or of the Witwatersrand High Court on the application of either party.

Award may be made a rule of the Supreme Court.

Costs.

21. All the costs of the arbitration and incident thereto shall be borne by the local authority unless the arbitrator or arbitrators shall award the same or a less sum than shall have been offered by the local authority in which case each party shall bear its own costs and the costs of the arbitrators shall be borne by the local authority. Any costs recoverable by one party from the other shall be taxed by the Taxing Officer of the Supreme Court or Witwatersrand High Court on the scale of charges allowed in those Courts.

PART III.

THE DIVERSION AND CLOSING OF PUBLIC ROADS FOR MINING PURPOSES.

Definitions.

Interpretation of terms.

22. For the purpose of this part of this Ordinance unless inconsistent with the context—

(a) "mining ground" shall mean ground held under any mining title;

(b) as used in connection with any mining ground the word "owner" shall include any person registered as the holder of the title to such mining ground or carrying on operations therein under an agreement with such holder; and for the purpose of service of notices or of prosecutions for contraventions of the provisions of this Ordinance or recovering any damages or other sum under this Ordinance if such holder or person as aforesaid be a firm or partnership all or any one or more of the members of such firm or partnership shall be deemed to be the owner; and in case such holder or person as aforesaid be any public company or any body of persons not being a firm or partnership the secretary or manager of such company or body or should there be no secretary or manager resident within this Colony then any member of the board of directors or managing board or committee of such company or body or the mine manager in the employ of such company or body shall be deemed to be the owner.

Application to District Registrar of Mining Rights for a provisional order to divert a public road running over mining ground.

23. (1) It shall be lawful for the owner of any mining ground to give written notice to any owner of any other mining ground to appear before the District Registrar of Mining Rights upon a day to be fixed by him at least thirty days after the date of the service of such notice as aforesaid and to show cause why such first-mentioned owner should not cause any public road to be diverted in such a way that the diversion will pass over the mining ground of such second-mentioned owner.

(2) It shall be lawful for the Commissioner of Mines on the report of the District Registrar of Mining Rights to grant a provisional order authorizing the said first-mentioned owner to cause such diversion as aforesaid to be made subject to the consent of the local authority concerned being obtained as provided in this Ordinance.

(3) No such provisional order as aforesaid shall be granted unless the Commissioner of Mines is satisfied that the working of the mining ground on which such diversion is to be made will not be materially impeded interfered with or obstructed thereby.

(4) The Commissioner of Mines in granting any such provisional order may limit the same by such terms conditions and restrictions as shall appear to him to be required for the protection of the owner of the mining ground on which the diversion is to be made in the proper working thereof.

(5) Nothing in this section contained shall be deemed in any way to prejudice the right of the owner on whose mining ground any such diversion as aforesaid is made to recover from the owner making such diversion damages for any injury which he may prove has been sustained by him by and in consequence of such diversion.

24. No person shall carry on any mining operations which in the opinion of the Government Mining Engineer are likely to cause damage to a public road or to be dangerous to persons using it; provided always that the owner of any mining ground may

Mining operations dangerous to public roads.

(a) carry any wires electric or otherwise across such road subject to such regulations as may be made by the Government Mining Engineer;

(b) lay any railway or tramway lines across such road; provided that the surface of the road between the rails and for two yards on either side thereof shall be maintained hard smooth and level with the top of such rails; and provided further that such owner as aforesaid shall observe such precautions as may be prescribed by regulations made by the local authority for the safety of the public;

(c) construct any bridge across such road provided that a minimum headway of at least eighteen feet and two clear spans of not less than twenty-two feet six inches each shall be provided for; or to construct any culvert or subway under such road;

(d) carry on under such road all mining operations which are not in the opinion of the Government Mining Engineer likely to cause damage to such road.

25. Any person who intends to commence any operations in mining ground which may cause danger or damage to any public road shall forward to the town clerk of the local authority within which such road is situate a written application for the permanent or temporary diversion of such road and shall with such application deposit fifty pounds with the town clerk.

Application for permission to close any public road.

26. With every such application shall be lodged

(a) a description of the proposed operations with an approximate estimate of the period during which any such operations endangering the road will be continued;

Contents of application.

(b) in the case of a proposed diversion the name of the owner or occupier of the land through which such diverted road will pass from the point where it leaves its former course until it rejoins a public road;

(c) in every case where the proposed diversion will pass over the land of any other person than the applicant the written consent of such person; provided always that in cases where such land is mining ground a certified copy of a provisional order of the Commissioner of Mines under section *twenty-three* may be substituted for such written consent;

(d) an undertaking by the applicant to pay any sums that may become due under section *forty* hereof guaranteed by two sureties owning rateable property of the value of one thousand pounds each within the area of the local authority;

(e) a true description of the existing road and of the proposed diversion with a sketch plan thereof;

provided always that the written consent of any person under paragraph (c) shall be without prejudice to any right to compensation that such person may have under this Ordinance and further that no guarantee under paragraph (d) shall be required if security sufficient in the opinion of the local authority to cover any sums that may become due under section *forty* hereof be deposited with the local authority at the time when the application is made. Any part of such security and of the fifty pounds deposited by the applicant as aforesaid that may remain over after complete satisfaction of any claims under section *forty* shall be returned to the applicant.

Inspection of proposed diversion or new or alternative road by local authority.

27. On receiving such application the local authority shall cause the course of the proposed diversion to be inspected and if the local authority shall be of opinion that such diversion will not adequately meet the needs of the public the local authority may by written notice refuse to grant the application.

Notice in *Gazette*.

28. If the local authority is satisfied that the proposed diversion will adequately meet the needs of the public the town clerk shall publish a notice in the *Gazette* and in one or more newspapers circulating within such municipality or urban district and shall cause a copy of such notice in legible characters to be placed in a conspicuous position at each place where the public road is proposed to be diverted.

Contents of notice.

29. The notice mentioned in the last preceding section shall contain

(a) the particulars and information mentioned in paragraphs (b) and (e) of section *twenty-six* hereof and an intimation that a plan showing the existing road and the proposed diversion may be inspected upon applying at the offices of the local authority;

(b) a list showing the names of the owners and occupiers whose written consent to such diversion has been received

by the town clerk or in respect of whom the provisional order mentioned in section *twenty-three* has been obtained;

(c) an invitation to all objectors to the proposed diversion or closing to appear before the local authority or a committee thereof duly appointed for the purpose at an hour and date to be named in such notice being not less than fourteen days after the publication thereof;

(d) an invitation to any person owning or occupying land through which the existing road passes or the diverted road will pass who will suffer damage in respect of such land in consequence of such closing or diversion or any other person aggrieved thereby to send in a claim for compensation within a time to be specified in such notice being not less than three months after the date of such notice.

30. The local authority shall make compensation for any damage occasioned to any person by the diversion or closing of a public road and the amount of such compensation shall in the absence of any agreement thereon be determined by arbitration in manner prescribed by the Expropriation of Lands and Arbitration Clauses Proclamation 1902; provided always that in assessing the amount of compensation payable to any person hereunder any benefits or advantage derived or to be derived by such person by reason of such closing or diversion shall be taken into account. No compensation shall be given to any person in respect of any damage unless a claim be sent in within the period of three months mentioned in the last preceding section. No compensation shall be paid by a local authority on account of any road closed by reason of the subsidence of such road in consequence of mining operations.

Compensation.

31. At the hour and date mentioned in such notice for such hearing the local authority or committee thereof shall consider such application and the objections thereto; provided always that such local authority or committee may adjourn the hearing from time to time as it thinks fit.

Hearing of application by local authority.

32. If satisfied that the needs of the public will be sufficiently provided for by the proposed diversion and that the applicant has given proper security that he can pay any sums that may become due from him under section *forty* hereof the local authority shall grant the application either simply or subject to such conditions or modifications as it may think fit to impose.

Granting of application.

33. If such application shall not be granted by the local authority within two months after the receipt thereof by the local authority or if it shall be granted subject to such conditions or modifications as the applicant is not willing to accept the applicant may on depositing with the local authority the sum of one hundred pounds as security for costs within fourteen days of the decision by the local authority but not afterwards claim by notice in writing served on the town clerk to have such application referred to arbitration and thereupon

Appeal by applicant.

it shall be so referred and determined in manner provided by the Expropriation of Lands and Arbitration Clauses Proclamation 1902 and the local authority shall refuse or grant such application in accordance with the finding of the arbitrators.

Carrying out of the work of closing any public road.

34. In every case where an application to close any public road or make any diversion therefrom is granted by the local authority either simply or subject to modifications the work of making such diversion or of closing such road shall be effected by the applicant in the manner prescribed by the local authority within a reasonable time or if the applicant and the local authority shall so agree the local authority may itself carry out such work at the applicant's expense.

Permission to commence mining operations.

35. As soon as the said diversion has been completed and opened to the public to the satisfaction of the local authority or immediately after the granting of the application hereinbefore mentioned if such local authority shall consider that any existing road will sufficiently meet the needs of the public in place of the road to be closed the local authority shall close such road and give the applicant a written permission to proceed with the mining operations referred to in his application. Any person commencing such operations before receiving such written permission shall be liable to a penalty not exceeding fifty pounds for every day or portion of a day during which such mining operations are carried on.

Notification by mine owners when dangerous operations are no longer necessary.

36. In case of a temporary diversion as soon as the operations which necessitated the closing of any public road have been completed and there is no longer any reason for keeping the said road closed the owner of the mining ground who caused such diversion shall at once give a written intimation thereof to the local authority. Any person delaying the sending of such intimation shall be liable to a penalty not exceeding one pound for every day or portion of a day during which such delay continues.

Notice requiring mine owner to restore closed road.

37. Upon receiving such intimation the local authority may give notice to the owner of the mining ground who caused such public road to be diverted requiring him at his own expense to take such steps as may be necessary to make such road secure and to restore it to its former course and condition; provided always that the local authority may at its discretion itself restore the road and recover the expense of doing so from such owner.

Compliance with notice to restore road.

38. Upon receiving such notice the aforesaid owner shall immediately take such steps as may be necessary to comply with such notice to the satisfaction of the Government Mining Engineer and local authority and upon the completion of such work shall inform the local authority thereof; provided always that such owner shall in no case be required to put the closed road in a better condition than it was before the diversion.

Closing of diverted or new road.

39. As soon as the closed road has been restored to the satisfaction of the Government Mining Engineer and local authority and reopened to traffic the diverted road made to take the place of such restored road may be closed.

40. In every case the following expenses shall be borne by the person applying under section *twenty-five* of this Ordinance for the diversion of a public road—

Expenses to be borne by the applicant.

(a) the cost of all work in connection with the diversion of any public road or restoring any closed road under this Ordinance;

(b) any compensation that may be payable by the local authority under section *thirty* hereof;

(c) the cost and expenses of publishing any notices under section *twenty-seven*;

(d) all the costs incurred by the local authority in respect of any proceedings under sections *thirty* and *thirty-two* of this Ordinance;

(e) the costs incurred by the local authority in any arbitration proceedings under section *thirty* of this Ordinance and in addition any costs incurred by the claimant which the local authority may be legally obliged to pay.

41. At the hearing before the local authority and before the officer appointed as aforesaid it shall be lawful for the local authority and any person who has lodged any objection to the application and the applicant to appear either in person or by counsel solicitor or admitted law agent.

Appearance at the hearing of application or appeal.

42. Any person committing a breach of any of the provisions contained in this part of the Ordinance shall be liable except where otherwise provided to a penalty not exceeding fifty pounds and in default of payment thereof to imprisonment for a period not exceeding three months.

Penalty.

PART IV.

SPECIAL PROVISIONS RELATING TO THE MAIN REEF ROAD.

43. For the purpose of this Part of this Ordinance "the road" shall mean the road about twenty-eight miles in length running from Roodepoort to Boksburg and known as the Main Reef Road or the Witwatersrand Road.

Interpretation of terms.

44. Such portion of the road as may pass through the area of any local authority shall vest in such authority in the same manner and subject to the like provisions and conditions as are prescribed in section *thirty-four* of the Municipal Corporations Ordinance 1903.

General control of the road.

45. No local authority shall permit more than a double line of rails to be laid along the road and trams running upon any part thereof shall be propelled by electric power only; provided always that nothing in this Ordinance contained shall affect any right of any person to construct tramways on the said road acquired before the taking effect of this Ordinance.

Only a double line of tram-rails to be laid on the road.

46. The road shall for every purpose except the above mentioned be deemed to be a public road within the meaning of this Ordinance.

Public road.

47. This Ordinance may be cited for all purposes as the Local Authorities Roads Ordinance 1904.

Title.

7912

No. 45 of 1904.]

[Promulgated 26th August, 1904.

ORDINANCE

TO AMEND THE LOCAL AUTHORITIES RATING ORDINANCE 1903 IN CERTAIN RESPECTS.

Assented to 17th August, 1904.

WHEREAS it is expedient to amend the Local Authorities Rating Ordinance 1903:

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Exemption of mineral value from rating.

1. It shall be the duty of every valuer in carrying out the duties imposed upon him by section *seven* of the Local Authorities Rating Ordinance 1903 to deduct in respect of any rateable property any value accruing to such property by reason of the presence of precious stones or precious metals **or base metals or minerals thereon or therein.*

Amendment of section *six* of Local Authorities Rating Ordinance, 1903.

2. Section *six* of the said Ordinance shall be and is hereby amended by the addition of the following sub-section:—

For text see Ordinance No. 43, 1903, section six (6).

Amendment of section *seven* of Local Authorities Rating Ordinance, 1903.

3. Section *seven* of the said Ordinance shall be and is hereby amended by the addition at the end of the said section of the following proviso (that is to say):

For text see Ordinance No. 43, 1903, section seven.

Power to remit rates on buildings not in existence and to cause buildings omitted to be valued and to cause to be made re-valuations corrections and apportionments.

4. Notwithstanding anything in the said Ordinance contained it shall be lawful for the local authority from time to time and at any time

(a) to remit any rate imposed on any buildings in any case in which such buildings have been demolished since the date of the making of the valuation roll;

(b) to cause any buildings omitted from the valuation roll to be valued by a valuer appointed as provided in the said Ordinance and to cause the current rate to be collected in respect thereof;

(c) to cause the valuation of any rateable property which is sub-divided after the date when the valuation in respect of such property has become final to be apportioned by such valuer according to the sub-divisions thereof and to cause any rate due in respect thereof to be assessed and collected according to such sub-division;

* Words in italics substituted by Ord. No. 22 of 1906, sec. 1.

(d) to cause any error appearing in the valuation roll from time to time in force to be corrected by such valuer in any case where some clerical error or some error as to the nature of the interest valued has been made in such roll and to cause any rate due in respect thereof to be collected according to the corrected roll;

(e) where a part only of any rateable property not separately valued in any valuation roll is or may be subject to a special rate under section *sixteen* of the said Ordinance to cause such valuer to apportion the value of such property appearing in such roll as between the part thereof which is or may be subject to any special rate as aforesaid and the remaining part which is not subject to such special rate;

provided that every such valuation revaluation correction and apportionment shall be subject to any objection made thereto at the next succeeding valuation court which may be appointed by the local authority under the said Ordinance; and provided further that in the case of any property which is added to the roll under the provisions in paragraph (a) hereof or the valuation of which is increased under paragraph (d) hereof if at the next succeeding valuation court the value of the said property be fixed at a sum less than that on which the last succeeding rate has been levied the owner shall be entitled to a refund of any rate paid by him in excess of that which would have been paid if the rate had been levied on the value as fixed by the said valuation court.

5. This Ordinance shall be cited as the Local Authorities Rating Amendment Ordinance 1904. Title.

No. 47 of 1904.]

[Promulgated 26th August, 1904.]

ORDINANCE

TO AMEND THE CRIMINAL PROCEDURE CODE, 1903.

Assented to 17th August, 1904.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. Section *twenty-four* of the Criminal Procedure Code 1903 shall be and is hereby amended by the addition thereto of the following sub-section:—

For text see Ordinance No. 1, 1903, section twenty-four (g).

*2. It shall be lawful for the Lieutenant-Governor from time to time to make alter or rescind a tariff of allowances which shall be paid out of public moneys to witnesses attending before a superior court or a court of resident magistrate in any criminal proceeding to give evidence either for the prosecution or if such payment be ordered by any such court for the accused and from the date of the publication in the *Gazette* of such tariff Law No. 7 of 1888 as amended by First Volksraad Resolution article *one thousand and forty* of the 3rd August 1892 shall be repealed.

3. This Ordinance may be cited as the Criminal Procedure Amendment Ordinance 1904 and shall be read as one with the Criminal Procedure Code 1903.

Amendment of section *twenty-four* of Criminal Procedure Code 1903.

Power to Lieutenant-Governor to frame tariff regulating witness expenses in criminal cases.

Title.

* For tariff of witness fees, see Govt. Notice No. 260 of 1909 (*Gazette* 5/3/09).

*with this Read act
18 of 1923*

No. 48 of 1904.]

[Promulgated 26th August, 1904.

†ORDINANCE

TO EXTEND THE POWERS OF THE RAND WATER BOARD.

Assented to 17th August, 1904.

WHEREAS it is expedient to confer further powers on the Rand Water Board as constituted under the Rand Water Board Incorporation Ordinance 1903; and

Whereas it is expedient that the board shall be empowered to raise money by the issue of stock and otherwise for the purposes of the Board.

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

PRELIMINARY.

1. This Ordinance may be cited as the Rand Water Board Extended Powers Ordinance 1904 and shall be read as one with the Rand Water Board Incorporation Ordinance 1903. Title.

2. The definition of "local authority" contained in section *one* of the Rand Water Board Incorporation Ordinance of 1903 shall be and is hereby repealed and there shall be substituted therefor the following definition:— Amended interpretation of a term in Ordinance No. 32 of 1903.

"Local authority" or "local authorities" mean and include the Councils of the Municipalities of Johannesburg Krugersdorp Germiston and Boksburg and the Urban District Boards of the Urban Districts of Roodepoort-Maraiburg and Springs.*

3. In this Ordinance unless the context otherwise requires "undertaking" means and includes all rights of taking distributing and supplying water and all other rights powers authorities and privileges and all such property movable and immovable reserve funds investments and all other interests and rights in to and out of the property movable and immovable and obligations and things in action including cash balances and book debts and all books accounts and documents relating thereto; provided that the cash balances of the Johannesburg Waterworks Estate and Exploration Company Limited and the book debts of the said company upon the appointed day shall not be included in the above definition; Interpretation of terms.

"water-undertaking" means and includes all the above property rights powers authorities privileges interests

† See Ord. No. 30 of 1905, Ord. No. 21 of 1906, Act No. 22 of 1909.

* Roodepoort-Maraiburg and Springs have been constituted municipalities under Ord. No. 41 of 1904, sec. 3, and Schedule.

obligations books accounts and documents in so far as the same are connected with the business of taking-distributing and supplying water;

“the secretary” means the person from time to time acting in the capacity of secretary to the board;

“Registrar” means the person for the time being appointed by the board to have the care and management of the nominal register of inscribed stock hereinafter provided and any person acting in the capacity of such registrar;

“mines” means gold mines;

“Rand Water Stock” means all stock issued by the Rand Water Board under the provisions of Part IV of this Ordinance.

Service of notices.

4. Where any notice is required by this Ordinance to be served on or given to any person it shall either be served personally on such person or left at his last usual place of abode and in case any such person shall be absent from this Colony any such notice shall be served on any agent of such person whose name and address are registered by him at the offices of the board and shall also be left with the occupier of any land in respect of which such notice is given or if there be no occupier shall be published in the *Gazette* and left with the Registrar of Deeds.

Division of subject matters.

5. This Ordinance is divided into five parts relating to the following subject matters:—

PART I.—CONSTITUTION OF THE BOARD.

PART II.—GENERAL POWERS.

PART III.—TRANSFER OF EXISTING UNDERTAKINGS.

PART IV.—FINANCIAL PROVISIONS AND BORROWING POWERS.

PART V.—MISCELLANEOUS PROVISIONS.

PART VI.—SPECIAL PROVISIONS.

PART I.

CONSTITUTION OF THE BOARD.

Constitution of board.

6. Sections *four five six seven* and *twenty-four* of the Rand Water Board Incorporation Ordinance 1903 shall be and are hereby repealed and there shall be substituted therefor the provisions contained in this section and in the next succeeding section of this Ordinance. The board shall consist of twenty-one members of whom one shall be a chairman appointed and removable by the Lieutenant-Governor and ten shall be appointed by the Transvaal Chamber of Mines and five shall be appointed by the Town Council of Johannesburg and one shall be appointed by each of the local authorities other than Johannesburg. The said Chamber of Mines Town Council of Johannesburg and other local authorities are hereinafter collectively referred to as “the constituent authorities” and separately as “the constituent authority.”

7. As soon as possible after the passing of this Ordinance each constituent authority shall proceed to appoint as new members of the board the number of persons it is entitled to appoint under the last preceding section and thereupon the members of the board existing at the date of this Ordinance shall retire with the exception of the chairman. The members of the board so appointed shall hold office until the appointment of their successors in the year 1906. Subsequent members of the board representing each of the constituent authorities shall be appointed by that constituent authority in the month of January 1906 and in the month of January in every third succeeding year thereafter.

Appointment
of new
members of
board.

Any members of the board may or may not be members of the constituent authority appointing them.

8. All questions arising at a meeting of the board shall be decided by a preponderance in the value of votes cast by the members present at the meeting as hereinafter set forth exclusive of the chairman of the board. In the case of an equality in the value of votes cast as aforesaid the chairman of the board shall have a casting vote. At any meeting presided over by the deputy-chairman of the board or by a chairman chosen by the members present such deputy-chairman or other chairman as aforesaid shall have an original but not a second or casting vote. Every member of the board shall be entitled to cast one vote but in counting such votes the chairman shall reckon

Value of
members'
votes.

(a) each vote cast by a member representing a local authority other than Johannesburg at a value equal to the number of pounds notified under section *fifty-nine* of this Ordinance as the total valuation of the rateable property within the area of such local authority;

(b) each vote cast by a member representing the Town Council of Johannesburg at one-fifth of the number of pounds notified as aforesaid as being the total valuation of the rateable property within the municipality of Johannesburg.

(c) each vote cast by a member representing the Chamber of Mines at a number equal to the number obtained by dividing the total value of the votes cast by the representatives of local authorities present and voting by the number of the representatives of the local authorities present and voting;

provided always that in the case of any resolution taken at a meeting of the board at which all members were not present if request is made by members the value of whose votes is equal to not less than one-fourth of the total value of the vote of the board that such resolution shall be reconsidered at a further meeting of the board such further meeting shall be convened within seven days at which such resolution shall be again submitted and the decision of the board on such resolution at such meeting shall be final.

Meeting of
the board to
be public.

9. All meetings of the board shall be open to the public and press but this section shall not apply to any committee of the board or to a committee of the whole board.

PART II.

GENERAL POWERS.

General
powers of
the board.

10. The board in addition to the powers conferred upon it by the Rand Water Board Incorporation Ordinance 1903 shall have the right to supply water within the limits of supply and for that purpose shall have the following powers:—

(a) To construct purchase maintain alter or improve offices buildings waterworks reservoirs dams water-courses water-channels pipes conduits cisterns meters water-cocks culverts filter-beds wells shafts pumping and other machinery and appliances roads railway sidings and rolling-stock bridges embankments cuttings and other works incidental to any of the purposes of the board.

(b) *To purchase lease or exchange voluntarily any land or rights therein or in connection therewith.

(c) †To acquire by compulsory purchase any land or rights therein or in connection therewith (other than water-rights) reasonably necessary for carrying out and developing any of the undertakings transferred to the board under Part III of this Ordinance.

(d) To sell lease or exchange any property of the board.

(e) To lay or carry through over on or across any land public or private and any public road public place or outspan either within or without the limits of supply and from time to time to repair and maintain any pipes for the supply of water with any necessary valves cocks meters or other accessories in connection with the same and to enter upon any such land road or place for such purpose as aforesaid provided that:

(i) At least seven clear days' notice except in the case of urgent repairs shall be given to the authority under whose management or control the said public land or road may be or to the owner or occupier of any private land or road before making any such entry as aforesaid.

(ii) On the completion of such works the board shall forthwith restore the surface of such land road or other place to the same condition as near as may be as it was in before the commencement of such works and in executing the same the board shall do as little damage as may be to such land road or other place and shall make full compensation for all damage done by it the amount thereof in case the parties differ to be settled by arbitration in manner provided by this part of this Ordinance.

* As amended by Ord. No. 30 of 1905, sec. 1 (1).

† As amended by Ord. No. 30 of 1905, sec. 2 (2).

- (iii) All proper and necessary precautions shall be taken to prevent injury to the persons or property of all persons using or being upon such land road or place.
- (iv) Any pipe carried or laid through over on or across any such land road or other place shall be at a depth measured from its upper surface of not less than fifteen inches below the surface of the ground except where any such road crosses a bridge or embankment.
- (f) To insure with any company firm or person against any losses damages risks and liabilities of any kind which may affect the board.
- (g) To appoint and remunerate officers and servants of the board and to dismiss the same.
- (h) To promote and oppose legislation.
- (i) To do all other works and things necessary or expedient for obtaining storing selling distributing and measuring water and for installing constructing and maintaining a complete system or systems of waterworks and water supply.
- (j) To enter into contracts for the carrying out by other persons of any of the things which by this Ordinance the Board is authorized to do.
- (k) **To purchase or acquire voluntarily from any person or persons engaged in mining or prospecting operations any water made available during the course or in consequence of such operations.*
- (l) †*To cultivate or otherwise turn to account any land owned or held on lease by the board and for the purpose of such cultivation or turning to account to acquire and maintain all necessary plant machinery or implements.*
- (m) †*To lend money upon terms to be settled by agreement to constituent authorities for the purpose of enabling such authorities to store distribute and measure water supplied to them by the board.*
- (n) †*Generally to enter into contracts for the carrying out of the powers of the board.*

11. With respect to the exercise of the power to purchase compulsorily any land or rights under the last preceding section of this Ordinance and to the compensation payable thereon the provisions of sections *six to twenty-three* inclusive of the Municipalities Powers of Expropriation Ordinance 1903 shall subject to the provisions of this Ordinance apply *mutatis mutandis* and shall be deemed to be incorporated in this Ordinance with the following alterations:—

Provisions as to exercise of compulsory powers.

For “council” shall be substituted “board”; for “councillors” “members”.

For “municipality” shall be substituted “limits of supply”.

For “town clerk” shall be substituted “secretary”.

* Sub-sec. (k) added by Ord. No. 30 of 1905, sec. 1 (3).

† Sub-secs. (l), (m), (n) added by Ord. No. 21 of 1906, sec. 2.

Power to board to satisfy purchase price or liabilities transferred to it in water stock or water bills.

12. The purchase price payable by the board for any land or rights purchased or acquired either voluntary or by compulsory purchase under the provisions of this part of this Ordinance may if the board and the other party so agree be discharged wholly or partly in Rand water stock or water-bills on such terms as may be agreed.

Property of board not to be rateable.

13. The property of the board used for the purposes of this Ordinance shall be deemed not to be rateable property within the meaning of the Local Authorities Rating Ordinance, 1903.

Supply of water by the board.

14. *Repealed by Act No. 22, 1909, section two.*

Uniform charge for water to be made to all consumers.

15. *Repealed by Act. No. 22, 1909, section two.*

Price for water not to be less than a certain amount.

16. *Repealed by Act No. 22, 1909, section two.*

Preference to be given to domestic consumption.

17. If at any time the available water of the board shall be insufficient to supply the requirements of all the consumers of the board the board shall give a preference to its consumers whether local authorities mines or other persons who require water for domestic purposes or for the reasonable preservation of the public health.

Letting of meters, etc.

18. The board may let for hire to any local authority mine or other consumer of water to whom the board is entitled to supply water any meter or instrument for measuring the quantity of water supplied and consumed and any pipes or apparatus for the conveyance reception or storage of the water on such terms as may be agreed.

Power to make bye-laws.

*19. The board shall have power to make alter and revoke bye-laws for any of the following purposes:—

- (a) For the protection of the property of the board.
- (b) For preventing the diminution or pollution of any water belonging to or supplied by the board.
- (c) For regulating the construction maintenance and repair of any cisterns meters cocks valves or other apparatus the property of the board or of any consumer of water supplied by the board.
- (d) For preventing the waste or unlawful use of water supplied by the board.
- (e) For recovering and enforcing payment of moneys due for water supplied by the board; provided that no such bye-law shall be made contrary to the provisions of this Ordinance; and provided further that no such bye-law shall come into effect until it has been approved by the Lieutenant-Governor and published in the *Gazette*.

* For bye-laws, see Govt. Notices Nos. 653 of 1905 (*Gazette*, 28/7/05), 1115 of 1909 (*Gazette*, 24/9/09).

20. The board may by bye-law impose a penalty for any breach of any bye-law made under this Ordinance and may also impose different penalties in case of successive breaches but no such penalty shall be imposed exceeding the sum of fifty pounds and any bye-law may provide that in addition to any such penalty any expense incurred by the board in consequence of any breach of such bye-law or in the execution of any work directed by such bye-law to be executed by any person and not executed by him shall be paid by the person committing such breach or failing to execute such work.

Penalties for breach of bye-laws.

21. Every contract made by the board shall be deemed to be duly executed if signed by the chairman or by one or more members of the board thereto authorized by resolution of the board and all such contracts lawfully made shall bind the board and its successors and all parties thereto.

Contracts made by the Board.

PART III.

TRANSFER OF EXISTING UNDERTAKINGS.

22. (1) Subject to the provisions of this Ordinance as from the appointed day the undertakings mentioned in Schedule E of this Ordinance shall be transferred to and shall vest in the board and there shall also be transferred from each company therein mentioned to the board all liabilities with respect to any debentures debenture stock or mortgage debt of such company and all other debts liabilities and obligations of such company then existing in connection with each undertaking.

Transfer of undertakings of water companies to board.

(2) The board shall pay to each company as compensation for the transfer of its undertaking such sum as may be agreed on between the board and the company or in default of agreement as may be determined by arbitration under this Part of this Ordinance but the sum so payable may if the board and the company so agree be discharged wholly or partly in Rand water stock.

23. As from the appointed day any debts debentures debenture stock bonds or mortgages secured on the undertaking of any of the said companies or any part thereof shall be by virtue of this Ordinance secured in like manner on the water fund established by this Ordinance and any debts debentures debenture stock bonds or mortgages charged on any specific property of any such company shall remain charged on that property; and the debenture holder mortgagee or other person secured shall have the same rights and remedies as nearly as may be against the board and the water fund or any specific property charged as he would have had against the company and the undertaking or the specific property charged if this Ordinance had not been passed; provided that any debenture debenture stock bonds or mortgages created by any of the companies mentioned in Schedule E of this Ordinance subsequent to the date of the passing of this Ordinance shall

Security for mortgages and other debts transferred to board.

be redeemable by the board if it shall so think fit by the issue to the holders or owners thereof of an amount of Rand water stock not exceeding the par value of such debentures debenture stock bonds or mortgages.

Discharge application and distribution of compensation.

24. The money or stock to which any of the said companies becomes entitled under this Ordinance in consideration for the transfer of their undertaking shall be paid or issued to the company by the board within six months after the appointed day or after the ascertainment of the amount thereof whichever date is the later.

Provisions as to arbitration.

25. (1) For the purpose of arbitration under this Part of this Ordinance a Court of Arbitration shall be constituted consisting of three Commissioners and Henry Worsley Taylor Esquire K.C. William Lumisden Strange Esquire and Richard Currie Esquire shall be the Commissioners and the said Henry Worsley Taylor Esquire K.C. shall be the President of the said Court.

(2) If any vacancy in the Court of Arbitration occurs by reason of death resignation or incapacity or otherwise the Lieutenant-Governor shall appoint a person to fill the vacancy and so on from time to time as occasion requires.

(3) The Court of Arbitration may appoint or supply such number of officers and persons as they may think necessary for the purpose of assisting them in the execution of their duties under this Ordinance and may remove any officer or person so appointed or employed and for the purpose of obtaining any information which the court may require may direct any Commissioner or any such officer or person to hold an inquiry. But nothing in this Ordinance shall authorize the Commissioners to delegate any of their judicial duties as arbitrators.

(4) There shall be paid to the Commissioners and to any officer or person appointed or employed under this section such salaries or other remuneration as the Lieutenant-Governor may assign and such remuneration and all expenses of the Court of Arbitration incurred with the sanction of the Lieutenant-Governor in the execution of this Ordinance shall be paid by the board.

(5) The Court of Arbitration may state their award or any part thereof in the form of a special case for decision by the Supreme Court and may at any stage of the proceedings at an arbitration and shall if so directed by the Supreme Court state in the form of a special case for decision by the Supreme Court any question of law arising in the course of the arbitration. No appeal shall lie from any such decision and the Court of Arbitration shall act in accordance with the decision arrived at in any such case.

(6) The Court of Arbitration may act by two of their number notwithstanding any vacancy in their number. Subject as aforesaid the court may regulate their own procedure at an inquiry held under this Part of this Ordinance.

(7) In fixing the sum to be paid by the board as hereinbefore provided the Court of Arbitration shall subject to the

provisions of the next succeeding sub-section determine the value of the undertaking of each of the said companies as if with the necessary modifications the Expropriation of Land and Arbitration Clauses Proclamation 1902 were applicable to the case: provided that (a) if and in so far as the undertaking of any of the said companies is in the opinion of the court a going concern the court shall determine the value of the same on such basis; and (b) if the undertaking of any of the said companies has not been so far developed as in the opinion of the court to have become a going concern then the court shall take into consideration all moneys which in their opinion have been reasonably expended in acquiring testing and developing the property together with interest thereon; and (c) the court shall not make any allowance for compulsory sale and shall not take into account any enhancement or depreciation of the market value of any stock or shares of any of the said companies which in the opinion of the court was caused by or resulted from the passing or the anticipation of the passing of this Ordinance: but the court may make such allowance as they think just for recoupment of any loss of interest pending reinvestment as well as for the cost of reinvestment and for covering any costs charges and expenses (other than costs incurred in any arbitration under this Part of this Ordinance) which have been or are likely to be incurred in consequence of the passing of this Ordinance by any of the said companies and which ought in the opinion of the Court to be borne by the board.

(8) The costs of any of the said companies incurred in an arbitration under this Ordinance shall except so far as the Court of Arbitration otherwise determine be borne by the board and the costs of any other person attending an arbitration under this Ordinance shall be in the discretion of the Court of Arbitration and the court may order the taxation of any costs by the Master of the Supreme Court according to law. The costs of and incidental to any proceedings in the Supreme Court and the statement of a case under this Part of this Ordinance shall be in the discretion of the Supreme Court.

(9) The Court of Arbitration shall commence their sittings within nine months after the passing of this Ordinance and shall proceed with the arbitration so as to make as far as possible all their awards before the appointed day.

The above-mentioned expression "appointed day" means the thirty-first day of December one thousand nine hundred and four or such other day* as the Lieutenant-Governor may appoint either generally or with reference to any particular provision of this Part of this Ordinance and different days may be appointed for different purposes and different provisions of this Part of this Ordinance whether contained in the same section or different sections or for different companies but no date earlier than the said thirty-first day of December shall be appointed as respects any company except with the consent of the company and the board.

* 31st March, 1905, fixed as appointed day under this section by Govt. Notice No. 1277 of 1904 (*Gazette*, 9/12/04).

Transfer of pipes reservoirs or other works to municipality of Johannesburg.

26. All pipes mains service reservoirs or other works belonging to the said companies and used for the distribution of water to consumers within the area of the municipality of Johannesburg and not used for the supply of water in bulk to the service reservoir shall be transferred by the board to the Town Council of Johannesburg on terms to be fixed either by agreement or by the arbitrators appointed under section *twenty-five* of this Ordinance or in the absence of any of the aforesaid arbitrators by arbitrators appointed in accordance with the provisions of the Expropriation of Land and Arbitration Clauses Proclamation 1902.

Application of Part II to arbitration when undertakings transferred.

27. Subject to the provisions of this Part of this Ordinance the provisions of Part II of this Ordinance shall apply to any arbitration proceedings which may be had in respect of the transfer to the board of the undertakings of any of the said companies.

PART IV.

FINANCIAL PROVISIONS.

A.—Issue of Stock.

Power to issue stock.

28. The board may from time to time by the issue of stock subject to the provisions of this Ordinance raise moneys in such amounts as the Lieutenant-Governor shall authorize by writing under the hand of the Colonial Secretary for the purpose of

(a) repaying any money advanced by the Lieutenant-Governor in accordance with section *twenty-seven* of the Rand Water Board Incorporation Ordinance 1903;

(b) exercising any of the powers rights and privileges which have been or may be hereafter conferred upon it by legislation and the cost of which ought in the opinion of the Colonial Secretary to be spread over a period of years;

(c) redeeming any stock issued under the provisions of this section at any time before the date when such stock is redeemable under the provisions of section *thirty (a)* of this Ordinance; provided that no stock shall be issued for this purpose on terms which in the opinion of the Colonial Secretary are less advantageous to the board than the terms on which the stock which it is intended to redeem was issued;

(d) paying the interest on any stock issued under this section for a period to be fixed by the Colonial Secretary in writing under his hand; provided that in no case shall such period exceed four years from the date of issue of the stock in respect of which such interest is paid;

(e) providing for the purchase price of any land water or water-rights or undertaking purchased or acquired by the board or for the redemption of any debentures debenture stock mortgage debt or other debt liability or obligation transferred to the board on any such purchase or acquisition.

29. Every such power to raise money shall be construed to authorize the board to create such an amount of stock and from time to time to issue such nominal amounts thereof as will in the aggregate according to the price of issue produce the actual amount of money for the time being raisable under such power.

Stock to be created to such amount as will produce actual amount of money raisable.

30. In any such issue of stock the following provisions shall be observed that is to say—

Provisions as to issue.

(a) the stock shall be redeemable within a period fixed by the written authority aforesaid or in default thereof by the resolution of the board referred to in the next succeeding sub-section determining upon the issue of the stock but so that such period shall not in any case exceed the term of thirty years from such issue;

(b) the resolution of the board determining upon the issue of any stock shall fix subject to the provisions of this Ordinance the rate of interest to be paid in respect of the stock so issued and shall include such subsidiary provisions as may be advisable for the convenient issue of the stock and the service of the same when issued. The provisions of such resolution (hereinafter called the "conditions of issue") shall not be subsequently varied;

(c) all such stock shall be entitled to the benefit of the charge and security hereinafter expressed and the Interest and Redemption Funds hereinafter constituted and the provisions for enforcing payment hereinafter contained and no holder of stock shall have any priority or preference by reason of the date of issue of the stock held by him or on any other ground;

(d) the stock shall be issued at and for such a price in money as the board shall resolve and the board may from time to time by subsequent resolution alter or modify as regards any stock remaining unissued the price fixed by any previous resolution relating thereto;

(e) the issue of any stock determined upon shall be in such amounts at such times and payable in such manner whether by instalment or otherwise and upon and subject to such reasonable conditions as the board shall from time to time by resolution determine and the certificates of stock shall be made out in such sums or amounts as shall be found expedient;

(f) the board may notwithstanding that the whole nominal amount of any particular issue of stock has not been issued resolve with the authority of the Lieutenant-Governor as hereinbefore provided to make a further issue of stock differing from such previous issue as to rate of interest or term or other incidents of redemption;

(g) the board may at any time resolve not to proceed with the issue of any stock which has been authorized under any previous resolution but has not been issued whether the said stock be the whole or a part of the stock so remaining unissued;

(h) the board may out of the proceeds of any stock pay the brokerage commission allowances or other costs or expenses of and incident to the issue of such stock.

Varieties of stock.

31. The stock shall be issued as inscribed stock or as stock to bearer as may be prescribed in the conditions of issue or where there is no express provision in such conditions then in either form according as the applicant therefor shall before the actual issue request in writing. Any stock which has been issued in the one form in the absence of such express provision as aforesaid may be converted into the other form pursuant to the provisions hereinafter contained.

In default of express provision or request stock to be inscribed.

32. In default of such express provision as aforesaid or of such written request from the applicant the stock shall be issued as inscribed stock.

Payment of interest on stock.

33. The board shall pay or cause to be paid the interest on the stock as and when such interest shall be due and the principal thereof at the time fixed for the payment thereof in accordance with the provisions of this Ordinance.

B.—Inscribed Stock.

Certificates for inscribed stock.

34. The certificates for inscribed stock shall be in the form set forth in Schedule A hereto with such variations if any as circumstances may require.

Register of inscribed stock.

35. The board shall cause a register (hereinafter called the "nominal register") of inscribed stock to be kept in one or more books and there shall be entered in such register the following particulars arranged under separate headings in respect of each separate issue of inscribed stock namely—

(a) the names and addresses of the owners for the time being of any amount thereof;

(b) a statement of the amount of such stock held by each owner and the date at which the name of any person was entered in the nominal register in respect of such stock.

Register.

36. The nominal register may be in duplicate and shall be kept either under the supervision of the board at the board's office or by such bank or agent as the board shall from time to time entrust with the keeping of such register or jointly by the board and by such bank or agent.

Effect of register.

37. Such nominal register shall be prima facie evidence of the title of any person in respect of stock of which he is entered as owner and of any other matters hereby directed or authorized to be inserted therein.

Inspection.

38. Any person may inspect the nominal register at any reasonable time upon payment of such fee not exceeding two shillings and sixpence as may be fixed by the board and shall be entitled to obtain from the secretary or the registrar copies or extracts of the register certified by him to be true copies or extracts upon payment of such fee as the board shall fix not exceeding five shillings with the addition of sixpence for every fifty words thereof (three figures to count as one word)

and any copy or extract so certified shall be admissible in evidence but without prejudice to the right of any person to disprove the correctness thereof.

39. On demand in writing from a person entitled to inscribed stock paid up in full for which no certificate has been issued the board shall make out and give to such person free of charge a certificate or certificates thereof in form aforesaid in the name or names either of himself or of such other persons as he shall direct and such certificate or certificates shall be prima facie evidence of the title of the person named therein to the stock therein specified. Issue of stock certificate.

40. Inscribed stock shall be transferable by the owner for the time being either by entry in the books of the board or by a deed. Transfer of inscribed stock.

41. The following provisions shall apply in the case of stock transferred by entry in the books of the board— Transfer in book.

(a) the registrar shall keep books (herein referred to as "Inscribed Stock Transfer Books") wherein transfers of inscribed stock so transferred shall be entered;

(b) every such entry shall be conceived in proper words for the purpose of transfer and shall be signed by the person making the transfer or if absent by his agent thereunto lawfully authorized by writing under his hand;

(c) a fee not exceeding two shillings and sixpence shall be paid to the registrar upon any such transfer;

(d) the registrar shall enter in the nominal register of inscribed stock a memorial relating to the transfer containing the particulars specified in section *thirty-five* hereof;

(e) the registrar shall on demand in writing by any person or party to a transfer or his legal representatives or other person thereunto lawfully authorized in writing under his hand give to such person a certificate signed by himself stating the date and other short particulars of such transfer for which certificate a fee not exceeding two shillings and sixpence shall be paid.

42. In the case of the transfer of any inscribed stock by deed the following provisions shall apply— Transfer by deed.

(a) the deed of transfer may be either (1) an instrument separate from the stock certificate or (2) a cession endorsed on the stock certificate;

(b) the deed shall in either case be in the form in this behalf set forth in Schedules C and D hereto respectively with such variations if any as the circumstances may require and the deed shall relate only to the transfer and shall not contain any recital trust power or proviso whatever;

(c) when the deed is a separate instrument the same after due execution shall be delivered to and kept by the registrar who shall enter in the nominal register of inscribed stock a memorial thereof containing the particulars specified in section *thirty-five* hereof;

(d) when the deed is by way of cession endorsed on the stock certificate the person to whom such stock is ceded shall produce the stock certificate to the registrar who shall thereupon pursuant to section *thirty-five* hereof enter in the nominal register the name of such person as the owner of the inscribed stock comprised in such stock certificate and the other particulars specified in section *thirty-five* hereof;

(e) in case of any such transfer as aforesaid the registrar shall on demand and delivery up of the stock certificate transferred deliver a new stock certificate to the person entitled thereto. A fee of five shillings shall be paid on the registration of any such transfer;

(f) until any such transfer has been registered as aforesaid the board shall not be affected by the same or any notice thereof or any claims or demands purporting to be by virtue thereof.

Investigation
as to transfer.

43. Before any transfer is entered in the register of inscribed stock the board or the registrar may if the circumstances appear to make it expedient require proof to its or his satisfaction of the title of any person claiming a right to make or receive or be entitled to a transfer.

Closing of the
register.

44. The board may as regards the inscribed stock or any part thereof cause the nominal register of inscribed stock and the inscribed stock transfer books to be closed at such time or times as they may think fit but so that such books be not at any one time kept closed for more than fifteen days. Due notice shall be given of such intended closing by notice published in one or more newspapers circulating in Johannesburg and in any other place where such books may be kept at least fourteen days before the date of such closing. During the period for which such books are closed no transfer of inscribed stock shall be registered.

C.—Stock to Bearer.

Form of
certificate.

45. The certificates for stock to bearer shall be in the form set forth in Schedule B hereto with such variations as the circumstances may require.

Issue of
certificate.

46. On demand in writing from a person entitled to stock to bearer for which no certificate has been issued the board shall make out and give to such person free of charge a certificate or certificates thereof in form aforesaid.

Coupons.

47. Annexed to each certificate of stock to bearer shall be coupons for the payment of the interest thereon covering such a period as the board shall determine. At the end of that period fresh coupons may be issued for such further period as the board shall determine and so on for successive periods. But the board may in lieu of issuing fresh coupons in respect of any certificate of stock to bearer give in exchange a fresh certificate with coupons.

Transfer of
bearer stock
and coupons.

48. Stock to bearer and coupons relating thereto shall respectively pass and the title thereto be transferred by delivery of the stock certificate or the coupons as the case may be.

D.—Changes of Form of Stock.

49. Subject to any express conditions prescribed as provided in section *thirty-one* of this Ordinance—

Change of inscribed stock to bearer stock and vice versa

(a) any person registered as the owner of inscribed stock may on delivering up his stock certificate require the board to issue to him a certificate or certificates of stock to bearer for and in respect of such inscribed stock and such certificate or certificates shall be made and issued accordingly;

(b) any person holding a certificate of stock to bearer may on delivering up such certificate with all unpaid coupons thereto belonging require the board to issue to him a certificate or certificates of inscribed stock and such certificate or certificates shall be made and issued accordingly and such person shall be entered in the nominal register as the owner of such stock;

(c) any certificates and coupons delivered up as aforesaid shall be cancelled;

(d) all necessary entries shall be made in the proper books to keep a true record of the transactions;

(e) a fee not exceeding five shillings shall be paid for each new certificate so issued.

E.—Interest on Stock.

50. The interest on inscribed stock shall be paid at such place or places as the board may fix in the conditions of issue by cheque or banker's draft to be posted to the registered address for the time being of each registered owner of such stock.

Payment of interest on inscribed stock.

51. The posting by or on behalf of the board of a letter containing a cheque or draft addressed to an owner of inscribed stock at his registered address shall as respects the liability of the board or of any bank or agent entrusted with the payment of such interest or any official thereof be equivalent to the delivery of the same to such owner himself.

Payment through the post.

52. Where more persons than one are registered as the joint owners of inscribed stock a cheque or draft as aforesaid in payment of the interest on such stock may be delivered or posted to any one of them and any one of them may give an effectual receipt for any interest due unless as to either matter notice to the contrary has been given in writing to the board or the bank or agent aforesaid.

Joint owners.

53. The board or such bank or agent as aforesaid before allowing the payment of any interest on any inscribed stock may if the circumstances of the case appear to make it expedient require evidence of the title of any person claiming such interest. And in such case the evidence shall be an affidavit of one or more competent persons or of such other nature as the board or the bank or agent aforesaid may require.

Investigation of title.

54. With respect to interest on stock to bearer—

(a) each coupon shall state the amount of interest payable in respect thereof and the date of payment;

Interest on bearer stock.

(b) payment to the bearer of a coupon of the amount expressed therein at or after the date named shall be a full discharge to the board and shall exempt the board, the bank or agent aforesaid and any official thereof from all liability in respect of that coupon and the amount represented thereby;

(c) the provisions of the last preceding section shall apply *mutatis mutandis* with regard to coupons and the payment of the interest thereby represented.

F.—Security for Stock.

Establishment of water fund.

55. (1) There shall be established a water fund and all receipts of the board shall be carried to that fund and all payments by the board shall be made out of that fund subject to the provisions of the next succeeding section.

(2) The board shall from time to time appoint a finance committee for regulating and controlling their finance and no order for the payment of any sum out of the water fund whether on account of capital or income shall be made by the board except in pursuance of a resolution of the board passed on the recommendation of the finance committee and any costs, debt or liability exceeding fifty pounds shall not be incurred except upon a resolution of the board based on an estimate submitted by the finance committee.

Reserve fund.

*56. The board may with the approval of the Lieutenant-Governor set aside out of the profits of the undertaking such sum as it thinks proper as a reserve fund to meet contingencies or for equalizing the charge for water or for repairing or maintaining the works connected with the business of the board or any part thereof; and the board may invest the sum so set apart as a reserve fund upon the securities mentioned in section *seventy-two* of this Ordinance.

Charge created by stock.

57. All stock issued under this Ordinance and any interest due or to become due thereon shall be charged indifferently as a first charge on the water fund and the reserve fund and on the whole of the revenues and rents and on all property belonging to the board and on all rates levied by the board or by the court in accordance with the provisions of this Ordinance as hereinafter set forth.

Rating roll.

58. The board shall every year prepare a rating roll to be called the rating roll of the Rand Water Board in the manner hereinafter set forth and the said roll shall be divided into two sections to be described as the municipal section and as the mining section respectively.

Rating roll municipal section.

†59. It shall be the duty of the town clerk of each local authority within the limits of supply at some time between the first and thirty-first day of December in each year to notify to the secretary in writing the amount of the total valuations of rateable property within the area of such local authority as shown upon the rating roll thereof as upon the first day of

* See Act No. 22 of 1909, sec. 9 (4) (c).

† See Act No. 22 of 1909, sec. 7.

the month of July preceding and such amounts shall be described as the municipal section of the rating roll of the Rand Water Board.

60. It shall be the duty of the Commissioner of Mines at some time between the 1st and the 31st day of December in each year to forward to the secretary a list of all claims claim areas or mynpachts situated within the limits of supply stating the name and address of every owner of such claims claim areas or mynpachts as appearing in the records of the Registrar of Mining Rights and the number of each such claim claim area or mynpacht and the name of the farm on which the same is situated; provided that in making such statement the area of each such claim area or mynpacht shall be divided into claims and shall for all the purposes of this Ordinance be considered as such, any fraction of a claim greater than one-half being reckoned as a claim. Such statement shall be described as the mining section of the rating roll of the Rand Water Board.

List of claims to be sent in by Commissioner of Mines.

61. No statement contained in any rating roll framed under this Ordinance and no rate based thereon shall be rendered void or be affected by reason of any mistake or variance in the description of any claims claim areas or mynpachts referred to therein or in the name of any owner thereof; and no rating roll compiled in terms of this Ordinance shall be capable of being challenged or set aside by reason of any informality.

Valuation roll not to be challenged or set aside.

62. If at any time the ordinary revenues of the board together with the reserve fund are insufficient for the purposes of the payment of interest on and the payment due for the redemption of loans raised under this Ordinance the board may subject as hereinafter mentioned make good the deficiency by levying a rate on the rating roll of the Rand Water Board in the manner hereinafter set forth; provided that no such rate shall be levied except in pursuance of a resolution passed by a majority of two-thirds of the votes of the members of the board present at a meeting of which at least fourteen days' notice of intention to propose the same has been given; and provided further that no such rate shall be levied until the approval of the Lieutenant-Governor thereto has been obtained.

Rate to be levied by board

63. For the purposes of levying any such rate as is referred to in the preceding section the sum to be raised shall be divided into two equal sums to be divided into sum A and sum B respectively.

Method of levying rates.

*64. The board shall apportion sum A among the several local authorities within the limits of supply according to the total valuation of each local authority as shown in the municipal section of the rating roll of the Rand Water Board and the several local authorities shall be liable for the payment of the amount so apportioned to each.

Sum A apportioned among local authorities.

* See Act No. 22 of 1909, sec. 7.

Sum B
apportioned
among mines.

65. The board shall apportion sum B among the several owners of claims claim areas and mynpachts included in the mining section of the rating roll of the Rand Water Board according to the number of claims owned by each and the several owners of claims shall be liable for the amount so apportioned to each.

Method of
obtaining
payment of A.

†66. For the purpose of obtaining payments of amounts due under sum A the board shall issue their precept to each local authority requiring it to pay within the time limited by the precept the amount of sum A apportioned to it in accordance with section *sixty-four* of this Ordinance and such local authority shall comply with the requirements of such precept by paying the said amount out of its revenue; provided that should the said revenue not be sufficient for the payment of such amount such local authority may over and above any powers conferred thereon by the Local Authorities Rating Ordinance 1903 or any amendment thereof impose a special water rate on all rateable property as shown upon the rating roll of such local authority in the manner set forth in the said Ordinance or any amendment thereof; and provided further that the local authority shall transfer to its own account any surplus in their hands arising from any special water rate levied in pursuance of this Ordinance above the amount for which the rate was made and such surplus shall go in reduction of the next ordinary rate that may be levied upon the ratepayers for the purpose of defraying the expenses which may be incurred by such local authority.

Collection
of B.

67. For the purpose of obtaining payments of amounts due under sum B the board shall issue their precept to each owner of claims requiring him to pay within the time limited by the precept the amount of sum B apportioned to it in accordance with section *sixty-five*.

Enforcing
payment
of
amounts
leviable.

68. All amounts due under sum B shall be paid to enforced and recovered by the board in the same manner *mutatis mutandis* as if the same were a rate leviable under the Local Authorities Rating Ordinance 1903 and all the provisions of sections *eighteen nineteen twenty twenty-one twenty-two twenty-three twenty-four and twenty-five* of the said Ordinance with respect to the payment enforcement and recovery of rates and interest thereon to the proceedings for such recovery and to the evidence to be used in such proceedings shall *mutatis mutandis* apply to the said amounts and the board shall have all the powers of local authorities thereunder.

Enforcing
payment
against local
authority.

†69. In every case in which any contribution requisitioned from any local authority by the board shall be in arrear it shall be lawful for the magistrate of the Witwatersrand District on application of the board under the hand of the secretary to summon the mayor or acting mayor or chairman of such local authority to show cause why such contribution has not been paid and after hearing the complaint preferred under the authority of the board if the magistrate shall think

† See Act No. 22 of 1909, sec. 7.

fit to declare such local authority to be in default. Upon such declaration being made the board shall be vested with all the powers of the local authority vested in such local authority under section *sixty-six* of this Ordinance and may impose collect enforce and recover all rates and sums due under the precepts as though the board were such local authority.

G.—Interest and Redemption Funds.

70. For payment of interest on the stock and for redemption and extinction of the stock there shall be created two funds hereinafter called the interest fund and the redemption fund respectively which shall be maintained applied and dealt with in manner hereinafter provided.

Creation of interest and redemption funds.

71. (1) There shall be paid and transferred to the interest fund in each year for the payment of interest on the stock a sum equal to the aggregate amount of all the interest payable in that year on the outstanding stock.

Payments to interest fund and redemption fund.

(2) There shall be paid and transferred to the redemption fund the sums specified below as and when they become payable or receivable that is to say—

- (a) the net proceeds of any sales of fixed property belonging to the board;
- (b) all other incomings of the board in respect of any sales of rights or interests in the nature of or analogous to fixed property easements or servitudes;
- (c) the income of the investments of the redemption fund;
- (d) the payments mentioned in section *ninety-four* hereof;
- (e) any payments which may be required under the provisions of sub-section (2) of section *seventy-five* of this Ordinance.

72. The redemption fund so far as not immediately required for the purposes in the next section mentioned shall be invested as the board may direct in one or more of the stocks funds and securities following, namely—

Investment of redemption fund. *

- (a) the stocks funds and securities from time to time styled in the Law of England “Trustee Securities”;
- (b) the stocks and securities issued or guaranteed by the Government of any Colony or Dependency of the British Empire;
- (c) the debentures mortgages or debenture stock of any railway tramway dock harbour or waterworks corporation created by special legislative enactment within the British Empire;
- (d) the municipal fund or town debt of any town in South Africa constituted by or pursuant to any general or special statute ordinance or statutory enactment;
- (e) Rand Water Stock: provided that any stock so purchased shall not again be sold.

73. The redemption fund shall be applied from time to time in redemption of the stock according to the provisions of this Ordinance and may also be applied in the manner and subject to the conditions herein provided—

Application of redemption fund.

- (1) where any power has been conferred on the board under the provisions of sections *twenty-eight* and *twenty-nine* of this Ordinance to raise money by the issue of stock such power may be exercised either wholly or partially by using for this purpose any moneys for the time being standing to the credit of the redemption fund;
- (2) in every case where the board proposes to use the redemption fund for the above-mentioned purpose it shall first pass a resolution authorizing the withdrawal of the moneys from the redemption fund in accordance with the conditions herein prescribed and specifying the account of the said fund from which the moneys are to be withdrawn and if they are to be withdrawn from more than one of such accounts the amount to be withdrawn from each such account;
- (3) the amount to be withdrawn shall be equal to the sum which is to be raised by this means;
- (4) immediately on the withdrawal of such moneys as aforesaid the same payments shall be made and the same procedure observed *mutatis mutandis* as if such amount had been raised by an issue of new stock bearing interest at the same rate as the stock represented by the account from which the said amount was withdrawn and repayable at the same date as such stock is repayable; provided that all sums payable as aforesaid by way of interest on the amount so withdrawn shall be paid into the redemption fund to the account from which such amount was withdrawn.

Redemption fund not to be pledged.

Accounts of redemption fund.

74. The board shall not create or purport to create any lien or charge upon or against the redemption fund or any part thereof or any moneys applicable thereto whether expressed to be subsequent or subject to the sole charge hereinbefore expressed or otherwise.

75. (1) All proper books and accounts shall be kept and entries made to show from time to time the position of the redemption fund and in particular the investments thereof. Full and detailed accounts of the redemption fund and the investments thereof and of all payments and receipts in connection therewith during the year shall be published yearly with the general accounts of the board in a form to be approved by the Colonial Secretary and a copy thereof shall be furnished to the Colonial Secretary.

(2) For the purpose of such accounts the Board shall twelve months after a *date to be fixed by the Colonial Secretary in writing under his hand but in no case later than three years from the date of each issue of stock and thereafter once in each year cause a valuation to be made of the redemption fund and shall at the same time ascertain what would be the amount at the date of such valuation of a sinking fund constituted by equal annual payments commencing from the said first-mentioned date in respect of such issue of stock sufficient if

* 31st March, 1907, fixed as date under this section by Govt. Notice No. 378 of 1905 (*Gazette*, 5/5/05).

accumulated with compound interest at the rate of three and a half per centum per annum to redeem the whole outstanding stock of such issue at the expiration of thirty years from the issue thereof or at the expiration of any period being less than thirty years which may have been prescribed for the redemption of such stock. If it shall then appear that the value of the redemption fund is less than the amount of a sinking fund so constituted and accumulated as aforesaid the board shall cause a further payment to be made into the redemption fund so that the value thereof shall not be less than the said amount.

The accounts referred to in sub-section (1) hereof shall not be passed by the board in any year without a certificate from the auditor appointed under section *ninety-eight* of this Ordinance that he is satisfied both as to the correctness of the accounts and books and as to the maintenance of the redemption fund at the amount required by this Ordinance.

76. Any owner of stock or person authorized by him in writing may inspect the books and accounts of the redemption fund at any reasonable time upon payment of such fee not exceeding two shillings and sixpence as may be fixed by the board and shall be entitled to obtain from the secretary copies or extracts of or from the said books and accounts certified by him to be true copies or extracts upon payment of such fee as the board shall fix not exceeding five shillings with the addition of sixpence for every fifty words (three figures to count as one word).

Inspection of books and accounts.

H.—Redemption.

77. The board may at any time purchase the stock at such price as may be agreed upon. The purchase money may be paid out of any moneys other than the redemption fund which may be available for such purpose. The stock purchased shall be immediately cancelled.

Purchase for cancellation.

78. Any stock not previously cancelled shall on the date fixed for redemption by the conditions of issue become payable at the nominal amount thereof and such amount shall together with any interest then due be paid to the owner of any inscribed stock or the bearer of any certificate of stock to bearer.

Redemption.

I.—Enforcing Payment of Stock.

79. If at any time any interest due on any stock remain unpaid for three months after demand therefor in writing has been lodged with the secretary by the person entitled thereto or his duly authorized representatives proceedings to enforce payment may be instituted and proceeded with subject to the provisions contained in sections *eighty* and *eighty-one* hereof.

Default of payment of interest.

80. The owner of any stock in respect whereof such default has been made may apply to any competent court for the appointment of a receiver of the assets hereby charged with the payment of the principal and interest of the stock. On the hearing of such application the court may make such order and give such directions as under the circumstances shall seem expedient for raising and payment of the moneys due. In

Proceedings to enforce payment.

particular the court may order and declare that a rate or rates of such amount or amounts as it shall fix be levied upon all rateable property and upon all owners of claims claim areas and mynpachts within the Witwatersrand District by the receiver in the manner set forth in sections *fifty-seven* to *sixty-nine* inclusive and the proceeds thereof shall be paid into court or otherwise as the court shall direct. For the purposes of this section the receiver shall exercise all the powers to levy rates conferred upon the board by sections *fifty-seven* to *sixty-nine* inclusive provided always that the exercise of such powers by the receiver shall not require the sanction of the Lieutenant-Governor.

Further proceedings.

81. In the event of such default in payment of interest in whole or part being continued for a further period of three months the owner or owners aforesaid may apply to the court for a declaration that the principal of all the stock for the time being outstanding has become due and the court shall make such declaration accordingly with all such consequential orders and declarations unless satisfied that in the interest of owners of stock it would be advisable to otherwise deal with the application and in such case the court may postpone the application and may ultimately make or refuse an order according to the circumstances.

Default in payment on expiration of period for redemption.

82. In case default shall be made in payment of the principal of any stock which has become repayable for one month then the like proceedings *mutatis mutandis* as specified in sections *eighty* and *eighty-one* may be instituted and proceeded with at the suit or on the application of any owner of stock. The court may also order a realization of the redemption fund or a sale of any assets charged as aforesaid and may make such order as it shall think fit for the due carrying out of such sale or realization and for the application of moneys raised thereby.

Regard to wishes of stockholders.

83. (1) In making or refusing any order as aforesaid the court shall have regard to the wishes of the owners of stock as a whole and may order meetings to be held to ascertain such wishes and give all necessary directions as to such meetings and may direct any persons not parties to the proceedings to be made parties and to be served.

(2) Any order made shall be deemed to be made on behalf of and shall inure to the benefit of all the owners of stock interested in or affected by such order.

J.—Subsidiary Provisions.

No trust or notice of interest recognised.

84. The registrar shall not enter in the nominal register or the inscribed stock transfer books or any other book or document or be otherwise affected by any notice of any alleged right interest trust power or claim of or by any person in respect of any stock other than a person entered in such books as owner of inscribed stock or lawfully entitled to be so entered in accordance with the provisions of this Ordinance.

85. If any stock certificate or coupon is worn out or damaged the owner on delivery up of the same and payment of a fee not exceeding five shillings may require the board to cancel it and issue to him a similar certificate or coupon.

Renewal of certificates.

86. If any stock certificate or coupon is lost or destroyed the owner on proof of the same to the satisfaction of the board and on payment of a fee not exceeding five shillings together with all costs and expenses reasonably incurred by the board and on giving indemnity to the satisfaction of the board may require the board to issue a similar certificate or coupon.

Lost certificates.

87. If the name of any person is without sufficient cause entered in or omitted from the nominal register or the inscribed stock transfer books or if any incorrect or improper entry is made or if default is made or unnecessary delay takes place in making any entry in such nominal register or transfer books any person aggrieved may apply to the court for an order that the nominal register or transfer books may be rectified. The court may on such application make such order both with regard to the issue and as to costs as to it may seem fit.

Proceedings to rectify the register.

88. (1) If it shall at any time appear to the Colonial Secretary from the returns to be rendered as hereinbefore required or otherwise that the board has failed to comply with the requirements of this Ordinance with regard to any payment application or investment in relation to the stock or redemption fund it shall be his duty to bring the matter to the notice of the board and to request that the default may be made good within a time to be specified.

Proceedings in case of non-compliance with provisions of Ordinance.

(2) If the board shall fail to comply with such request it shall be competent for the court on the application of the Colonial Secretary or of any person liable to pay rates under this Ordinance or of any owner of stock to make an order for the due enforcement of the provisions of this Ordinance. The Colonial Secretary shall be awarded the costs of any such application made by him.

89. "The court" in the two last preceding sections means the Supreme Court of the Transvaal or the Witwatersrand High Court and the jurisdiction hereby given may be exercised in a summary manner in chambers.

Meaning of court.

90. Instead of raising for any purposes by the creation and issue of stock money which they are authorized to raise under this Ordinance the board may if they see fit raise for those purposes such money by means of bills subject to and in accordance with the following provisions:—

Power to issue bills.

(1) Bills issued by the board shall be called "Rand Water Board Bills".

(2) A Rand Water Board bill shall be a bill in the form prescribed by regulations made in pursuance of this Ordinance for the payment of the sum named therein in the manner and at the date therein mentioned so that the date be not less than three or more than twelve months from the date of the bill.

- (3) Such bills may be offered for purchase by tender in such manner on such conditions and after public advertisement in such manner as the board determine.
- (4) The bills shall be issued under the authority of a warrant sealed by the board.
- (5) Each bill shall be for the amount directed by the board not being less than five hundred pounds.
- (6) Each bill shall be under the seal of the board.
- (7) A register of the bills issued and renewed by the board shall be kept by the secretary or such other person as may be appointed by the board and such register shall show the amount of each bill the principal money raised by such bill the statutory borrowing power in respect of which the bill is issued the date of issue the date when the same falls due and the date of payment thereof. Such register shall at all reasonable times be open to inspection without payment of any fee by any creditor of the board.
- (8) The board shall not issue bills payable to bearer.
- (9) The board shall before issuing any bill under this Ordinance from time to time make regulations with respect to bills subject to and in accordance with this Ordinance and shall furnish to the Colonial Secretary a copy of any regulations so made. Such regulations shall provide—
 - (a) for regulating the preparation form mode of issue mode of payment and cancellation of bills;
 - (b) for regulating the issue of a new bill in lieu of one defaced lost or destroyed;
 - (c) for preventing by use of counterfoils or of a special description of paper or otherwise fraud in relation to bills;
 - (d) for the proper discharge to be given upon the payment of a bill.
- (10) The board may enter into such arrangements with any bank for carrying into effect the provisions of this Ordinance with respect to the issue of bills and to the payment of the principal sum named therein and to all matters relating thereto and for the proper remuneration of such bank with reference thereto as they may think proper. Such remuneration shall be paid out of the general funds of the board.
- (11) The amount of money received by the board in respect of a bill shall be deemed to be principal money raised by means of such bill and the difference between the amount payable in respect of a bill and the amount received in respect thereof shall be deemed to be interest on the principal money so raised.
- (12) The board shall provide from the same source and pay at the appropriate times into the interest and redemption funds created under this Ordinance the same funds for payment of interest and repayment of the principal money so raised as they would have done in respect of the stock in the place of which such bills have been issued.

(13) The aggregate amount payable on bills current at any one time shall not exceed the sum of one hundred thousand pounds except by the amount payable on bills issued shortly before any other bills fall due in order to pay off those bills.

(14) The board may subject to the provisions of the preceding sub-section renew bills at maturity.

(15) Money raised by the issue of bills shall be employed by the board for the purposes of the several borrowing powers in respect of which the bills are respectively issued.

(16) For the repayment of the principal money raised by bills the board may raise money by the creation of stock or issue of further bills but save as aforesaid the powers given to the board to raise moneys by the creation of stock shall be suspended to the extent to which moneys have been raised by the issue of bills.

(17) A Rand Water Board bill shall entitle the holder to payment at maturity of the sum expressed in such bill to be payable and shall be charged on all the revenues of the board.

(18) The secretary shall within twenty-one days after the thirtieth day of June in any year during which any bills have been issued paid off or are outstanding under this section transmit to the Colonial Secretary a return in such form as the Colonial Secretary may prescribe and containing all such particulars as he may require in regard to the issue and payment of bills by the board.

91. (1) It shall be lawful for the board from time to time as circumstances may require to borrow money by way of overdraft from any bank which for the time being may be acting as the bankers of the board. No such overdraft shall exceed in amount the sum of fifty thousand pounds or extend for a period of more than ninety days without the sanction of the Lieutenant-Governor.

(2) Save as aforesaid it shall not be lawful for the board to raise or borrow money otherwise than in the manner and under the conditions prescribed in this Ordinance.

92. A person in good faith applying for any stock on the issue thereof or purchasing taking or holding stock once issued or advancing money in good faith to the board for or on the security of stock issued or to be issued shall not be concerned to inquire or to take notice whether the creation or issue thereof was or was not authorized under the issuing or borrowing powers of the board or otherwise in accordance with any Ordinance relating to such borrowing powers or whether or not the board or any meeting thereof was properly constituted or convened or whether or not the proceedings at any meeting of the board were legal and valid or regular or whether or not the conditions of issue were valid or have been duly observed or to see to any application of any moneys raised by the stock. A certificate of stock valid as to form once issued purporting to be by or on behalf of the board to a person taking the same in good faith and for good

Overdrafts.

Protection of persons taking stock in good faith.

consideration shall be legal and valid for all purposes in the hands of such person and any one taking from or through him notwithstanding any defect informality or illegality in the creation or issue of any of the stock in respect of which such certificate is or purports to be issued or in the making or issue of such certificate or that the amount of stock authorized or resolved on has been or will be exceeded or that such certificate is a duplicate or repetition of any certificate previously issued.

Transfer of stock free of municipal taxes.

93. The stock shall be issued and be transferable free of any municipal rate or assessment: provided that nothing herein contained shall apply to the payment of fees prescribed by this Ordinance.

Unclaimed interest.

94. If at any time any interest is not claimed at the time for payment thereof and remains unclaimed for a period of two years thereafter the amount thereof shall be paid into the redemption fund without prejudice to the right of any person at any time thereafter to establish his claim to such interest which shall thereupon be paid to him less any costs and expenses of the board incident to the proof of such claim but without any interest in respect of the period during which any such sum has remained unpaid.

Unclaimed stock.

95. (1) If at the end of the period within which any stock is required to be redeemed according to the provisions of this Ordinance the board shall not be able to redeem any such stock by reason of the owner thereof being unknown or not being forthcoming the board shall invest in any securities in which the redemption fund may be invested a sum equal to the nominal value of such stock and thereupon such stock shall be taken to have been redeemed for the purposes of this Ordinance.

(2) Any sums invested as aforesaid shall unless used to satisfy any legal claim in respect of the stock represented thereby be kept invested as aforesaid for a period of ten years after which time it shall be transferred by the board to the Colonial Treasurer to be dealt with according to law.

Evidence.

96. In case of any action or other proceeding civil or criminal relating to stock or coupons or the rights or interests of persons alleging claims thereto or alleged offences in respect of stock or coupons copies of entries in or extracts from the nominal register or the inscribed stock transfer books or any book or document of the board the registrar or any bank or agent referred to in sections *thirty-six* or *fifty-one* hereof duly certified as correct by the secretary or registrar in writing under his hand shall be admissible in evidence but the court before whom such action or proceeding is pending may for good cause order the production of the original of any of the books or documents aforesaid.

PART V.

MISCELLANEOUS PROVISIONS.

Annual report.

* 97. The board shall make to the Colonial Secretary an annual report of their proceedings. The board shall also give

* As amended by Act No. 22 of 1909, sec. 11.

to the Colonial Secretary such returns statistics and information with respect to the exercise of the powers of the board as the Colonial Secretary may require.

98. Section *twenty-three* of Ordinance No. 32 of 1903 is hereby repealed and the following sub-sections are substituted therefor:—

For text, see Ordinance No. 32, 1903, section twenty-three.

99. (1) Until the appointed day the undertaking of each company mentioned in Schedule E shall be maintained and carried on by the company as heretofore in the ordinary course of business but if the board think that any appointment to any office or service of the company or any contract with respect to any matter connected with the undertaking or any alteration in the rate of salaries or wages payable to any officer or servant of the company made by the company or any obligation incurred by the company subsequent to the introduction of this Ordinance into the Legislative Council is not reasonably necessary in the ordinary course of the business of the company they may give notice in writing to the company to that effect within three months after the appointed day; provided that if the board give any such notice it shall be referred to the Courts of Arbitration appointed under Part III of this Ordinance or in the absence of such Court of Arbitration the arbitrators appointed in accordance with the provisions of Part II of this Ordinance to determine whether or not the appointment contract alteration or obligation was reasonably necessary in the ordinary course of the business of the company and the arbitrators shall determine whether and to what extent as between the board and the company any liability arising in respect thereto is to be transferred to the board or is to be continued as a liability of the company.

(2) The accounts and balance-sheet of each of the undertakings of the said companies up to the appointed day shall be made up and audited in like manner and with the like incidents and consequences as nearly as may be as if this Ordinance had not been passed but as soon as practicable after the appointed day and the balance shown on the certified accounts representing profits available for immediate distribution as dividend and legally distributable as such shall in the case of each of such companies be thereupon paid over by the board to that company and the accounts and balance-sheet of each such company after the appointed day shall be audited by auditors appointed by the company.

(3) In determining the compensation for the transfer of the undertaking of a company the sum payable to the company under this section shall not be valued as forming part of the undertaking.

100. (1) For the purpose of enabling the said companies to prepare and conduct their cases for arbitration under this Ordinance and to enter into agreements with the board and to discharge their liabilities and generally to carry on their business and to wind up their affairs and dissolve:

Repeal of section *twenty-three* of Ordinance No. 32 of 1903.

Maintenance of undertakings till appointed day.

Provisions enabling companies to carry on business etc. after the appointed day.

(a) any such company may after the appointed day temporarily retain for their own use such money offices books accounts and documents and the services of such officers and servants as may be agreed upon between the board and the company or failing agreement be determined by the Colonial Secretary; and

(b) any officer of and any other person authorized in that behalf by any such company shall have free access to all the works transferred to the board from the company for the purpose of inspecting those works and to all books accounts and documents of the company in the possession of the board for the purpose of inspecting copying and making extracts from the same and shall have all proper facilities for the purposes aforesaid; and

(c) there shall be paid by the board to each such company from time to time on account of the sum ultimately found to be due to the company from the board such sums as may be agreed upon between the board and the company or failing agreement as may be determined by the Colonial Secretary.

Inspection of works of companies.

101. Any person authorized in that behalf by the board shall have free access to the works of any such companies for the purpose of inspecting those works and to all books accounts and documents in the possession of the said companies (other than documents prepared for the purpose of an agreement or arbitration under this Ordinance) for the purpose of inspecting and making extracts from the same and shall have all proper facilities for the purpose aforesaid.

Payment of dividends to companies till discharge of compensation.

102. (1) The board shall from and after the appointed day pay interest half-yearly at the rate of six per centum per annum on the amount of compensation payable to each of the said companies under this Ordinance until such compensation is paid or satisfied or if any such company shall have paid a dividend in respect of its water undertaking for the two half-years preceding the publication of this Ordinance a sum of money equal to the dividend on the ordinary and preference capital of the company attributable to such undertaking calculated on the average rate of dividend paid thereon respectively in respect of the two half-years preceding the publication of this Ordinance together with in respect of the reasonable expectations of increasing dividends (if any) such additional sums (if any) as may be agreed on or in default of agreement as may be determined by arbitration under this Ordinance; such sum shall and may be treated by the companies respectively as profits available for dividend between the shareholders as if this Ordinance had not been passed and may be distributed or dealt with accordingly.

If any instalment of such compensation as aforesaid is in pursuance of an interim award of the Court of Arbitration paid or satisfied to the company the sums payable under this section shall as from the date of payment or satisfaction be reduced by such an amount as may be specified in the interim award.

(2) The payments under this section shall until the compensation as aforesaid under this Ordinance is paid or satisfied be payable by the board at the dates on which the dividend on the ordinary and preference capital would have been distributable by the company; provided that if on the date at which any such sum is payable to a company it has not been determined whether any or what additional sum is payable to the company the additional sum (if any) shall be paid as soon as the amount thereof has been so determined.

(3) In this section the expression "ordinary and preference capital" means in the case of each company all the capital of the company in stock or shares whether ordinary or preference as the case may be existing on the appointed day.

103. Subject to the provisions of this Ordinance and without prejudice to any remedy over by the board against any of the said companies:

Pending proceedings and existing contracts.

(a) if on the appointed day any proceeding or any cause of action is pending or existing by or against any such company the same shall not abate be discontinued or be in any way prejudicially affected by reason of the transfer to the board of the undertaking of the company or of anything in this Ordinance but the proceeding or cause of action may be continued prosecuted and enforced by or against the board as it might have been by or against the company if this Ordinance had not been passed but not further or otherwise; and

(b) all contracts deeds bonds agreements and other instruments subsisting immediately before the appointed day and affecting any such company shall be of as full force and effect against or in favour of the board and may be enforced as fully and effectually as if instead of the company the board had been a party thereto.

104. All bye-laws rules and regulations and scales of water charges made or enforceable by any of the said companies shall so far as they are consistent with the provisions of this Ordinance continue in force with respect to the undertaking to which they relate until repealed altered or superseded.

Saving for bye-laws.

105. Subject to the provisions of this Ordinance every officer and servant exclusively employed upon or in connection with the undertaking of the Johannesburg Waterworks Estate and Exploration Company Limited immediately before the appointed day and mentioned in a list deposited with and signed by the Colonial Secretary shall as from the appointed day become an officer or servant of the board and shall hold his office or situation by the same tenure and upon like terms and conditions under the board as he would have held the same under the company if this Ordinance had not been passed; provided that no obligation shall be imposed on the board in respect thereof for a period exceeding six months from the appointed day.

Existing officers and servants Johannesburg Waterworks Estate and Exploration Company Limited.

PART VI.

SPECIAL PROVISIONS.

Cession to Lieutenant-Governor of contracts in respect of water on farm Wonderfontein.

106. (1) The rights of one George Henry Goch under a notarial contract of the 17th September, 1892, between him and the joint owners of the farm Wonderfontein situated in the District of Potchefstroom under which the said owners ceded to the said George Henry Goch all their rights in respect of the taking and conducting of the water from the said farm granted to them by the Government of the late South African Republic under a deed of agreement dated the 2nd March 1891 together with the rights of the said George Henry Goch under all other notarial contracts between him and the said owners in respect of the said water shall be and are hereby vested in and shall be formally ceded by the said George Henry Goch or his legal representatives to the Lieutenant-Governor in trust for the Government of the Transvaal and the said board jointly subject to the terms and conditions stated in the said contracts.

(2) There shall be refunded to the said George Henry Goch or his legal representatives in consideration for such cession as aforesaid all moneys with interest thereon at six per cent. bona fide expended or which have become due by him in connection with the acquisition maintenance and exploitation of the rights granted under the said contracts.

(3) The amount to be refunded in pursuance of the last preceding sub-section shall be determined by the Colonial Treasurer and shall within three months after such determination be paid to the said George Henry Goch or his legal representatives in equal shares by the said Treasurer and the board.

(4) Any payments becoming due to the owners of the said farm Wonderfontein after the taking effect of this Ordinance under the contracts ceded to the Lieutenant-Governor by the said George Henry Goch as mentioned in sub-section (2) of this section and all costs incurred in connection with such cession and in connection with the registration against the title-deeds of the aforesaid farm of such cession or contracts as may hereafter be so registered shall be paid in equal shares by the Colonial Treasurer and the said board.

(5) It shall not be lawful for the Lieutenant-Governor or the said board either separately or jointly to exercise or deal in any way with the rights ceded as aforesaid by the said George Henry Goch or his legal representatives under sub-section (1) of this section unless and until legislation has been passed authorizing them so to do.

* 107. (1) *It shall not be lawful for the board in any period of twelve consecutive months to pump more than a daily average of ten million gallons of water from the dolomite formation existing on in or under the properties comprised in the undertakings referred to in Schedule E and any properties*

Maximum quantity of water supplied by board from dolomite formation.

* Sub-section (1) substituted by Ord. No. 30 of 1905, sec. 3.

or rights which may be acquired by the board under sub-section (b) of section ten of this Ordinance save and except with the approval of the Lieutenant-Governor.

(2) The board shall keep proper books of account of the quantity of water drawn by it daily from each of the undertakings in Schedule E and the said books shall be open to the inspection at all reasonable times of such person or persons as may be appointed thereto by the Lieutenant-Governor.

(3) If the board shall commit or cause to be committed any act in contravention of sub-section (1) of this section it shall for every such act forfeit a sum of five hundred pounds sterling which may be recovered by action brought by the Attorney-General in any court of competent jurisdiction.

108. Nothing in this Ordinance contained shall exempt the board from any liability in respect of the diminution of the water of any fountain or stream consequent upon its operations for which it would were it not for this Ordinance have been liable.

Liability of board in respect of appropriation of water.

SCHEDULE A.

*Form of Inscribed Stock Certificate.
Rand Water Board.*

No..... £.....
This is to certify that..... is the proprietor of.....
pounds of Rand Water Board Stock subject to Ordinance No..... of 1904
relating thereto, and to the conditions of issue.
Signed on behalf and by authority of the Rand Water Board at.....
this..... day of..... 19....

SCHEDULE B.

*Form of Bearer Stock Certificate.
Rand Water Board.*

No..... £.....
This is to certify that the Bearer of this Certificate is entitled to.....
pounds of Rand Water Board Stock with interest thereon at the rate of.....
per cent. per annum subject to Ordinance No..... of 1904 relating thereto,
and to the conditions of issue.
The Coupons attached to this Certificate are payable at.....
When the Coupons are exhausted, this Certificate will be exchanged on pre-
sentation at..... for a new Certificate with fresh Coupons attached.
Signed on behalf and by authority of the Rand Water Board at.....
this..... day of..... 19....

SCHEDULE C.

*Deed of Transfer.
Rand Water Board Stock.*

I..... for consideration received, do hereby transfer unto
..... of..... the sum of..... pounds, Rand Water
Board Stock, part of the Stock standing in my name in the Books of the Rand
Water Board subject to the several conditions on which I hold the same as the
execution thereof.

Signed at..... this..... day of..... 19....

Witness :

SCHEDULE D.

Cession by Endorsement on Certificate.

I hereby transfer the within Stock unto.....
of.....subject to the several conditions on which I hold
the same at the execution thereof.

Signed at.....this.....day of.....19.....

Witness :

SCHEDULE E.

Existing Undertakings.

The water undertakings of the Braamfontein Company, Limited.
The whole undertaking of the Johannesburg Waterworks Estate and
Exploration Company, Limited.
The whole undertaking of the Vierfontein Syndicate, Limited.

B. W. S. 8/29/12

No. 49 of 1904.]

[Promulgated 14th October, 1904.

*ORDINANCE

TO AMEND THE MUNICIPALITIES ELECTIONS ORDINANCE, 1903.

Assented to 12th October, 1904.

WHEREAS it is necessary to amend the Municipalities Elections Ordinance 1903 and to rectify certain errors and omissions therein contained ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

1. Section *twenty-four* of the Municipalities Elections Ordinance 1903 (hereinafter referred to as the principal Ordinance) shall be and is hereby repealed and there shall be substituted therefor the following provisions which shall be deemed to have been in force from the date of the taking effect of the principal Ordinance in lieu of the provisions of the said section *twenty-four* that is to say :—

Repeal of section *twenty-four* of Ordinance No. 38 of 1903 and substitution of new provisions therefor.

For text, see Ordinance No. 38, 1903, section twenty-four.

†2. Whenever at any annual election mentioned in section *twenty-five* of the principal Ordinance subsequent to the annual election for the year 1904 a poll is required to be taken such poll shall be taken on the last Wednesday in the month of October. For the purposes of sections *one three* and *four* of this Ordinance the said day or in the case of any annual election for 1904 the day fixed as the polling day and if no such day be fixed then the day of nomination shall be the day of the annual election.

Poll at annual election to take place last Wednesday in October in each year other than 1904.

†3. The councillors elected at every annual election to fill the vacancies caused by the retirement of councillors owing to the expiration of the period of office for which such last-named councillors were elected shall continue in office until the day of the third annual election next ensuing notwithstanding anything contained in sub-section (1) of section *twenty-six* of the principal Ordinance.

Duration of office of councillors elected at annual elections.

†4. *This section amends section fifty-six of Ordinance No. 38 of 1903.*

Repeal of section *fifty-six* of Ordinance No. 38 of 1903 and substitution of new provisions therefor.

* See Ord. No. 26 of 1905, Act No. 23 of 1909.

† As to municipalities Pretoria and Johannesburg see Act No. 23 of 1909, sec. 2 (1).

‡ Sec. 56 forms part of Chapter VII of Ord. No. 38 of 1903, which chapter was repealed by Ord. No. 26 of 1905, sec. 3 ; see, however, Act No. 23 of 1909, sec. 2.

Repeal of section *one hundred and thirty-one* of Ordinance No. 38 of 1903 and substitution of new section.

Title.

5. Section *one hundred and thirty-one* of the principal Ordinance shall be and is hereby repealed and there shall be substituted therefor the following provision :—

For text, see Ordinance No. 38, 1903, section one hundred and thirty-one.

6. This Ordinance may be cited for all purposes as the *Municipalities Elections Amendment Ordinance 1904* and shall be read as one with the principal Ordinance.

B.D.W. 9 21912

No. 50 of 1904.] [Promulgated 14th October, 1904.

*ORDINANCE

TO EXTEND THE POWERS OF THE COUNCIL OF THE MUNICIPALITY OF PRETORIA.

Assented to 12th October, 1904.

WHEREAS it is expedient to extend the powers of the Council of the Municipality of Pretoria;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

†1. The provisions of sections *thirty-six* and *sixty-five* of the Municipal Corporations Ordinance 1903 shall apply to the Council of the Municipality of Pretoria in the same manner as if the said Council were the Council of a Municipality which had come under the operation of the said Ordinance.

Application of sections *thirty-six* and *sixty-five* of Ordinance No. 58 of 1903 to Municipality of Pretoria.

2. This Ordinance shall be cited as the Pretoria Municipality Extended Powers Ordinance 1904 and shall be read as one with the Pretoria Municipal Proclamation 1902 and the Pretoria Municipal Proclamation Amendment Ordinance 1902.

Title.

* See Act No. 32 of 1907, Act No. 12 of 1910.

† See Ord. No. 1 (Priv.) of 1906, sec. 3.

No. I (Private) of 1904.]

[Promulgated 12th February, 1904.]

ORDINANCE

TO ADD TO AND FURTHER AMEND THE JOHANNESBURG
MUNICIPALITY BORROWING POWERS ORDINANCE, 1903.

Assented to 10th February, 1904.

WHEREAS it is desirable to extend the limit of the aggregate amount which may under the provisions of the Johannesburg Municipality Borrowing Powers Ordinance 1903 the Johannesburg Municipality Special Borrowing Powers Ordinance 1903 and of the Johannesburg Municipality Borrowing Powers Amendment Ordinance 1903 be raised by the Town Council of Johannesburg hereinafter called "the Council" by the issue of bills;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows;

Amendment
of Johaanes-
burg
Municipality
Borrowing
Powers
Ordinances.

1. The Johannesburg Municipality Borrowing Powers Ordinance 1903 amended as to section *fifty-one* sub-section (13) by the Johannesburg Municipality Borrowing Powers Amendment Ordinance 1903 shall be and is further amended as follows;

At the end of the said amended sub-section the following words shall be read in and added;

"provided that it shall be lawful and competent for the Town Council after giving fourteen days' notice by advertisement in a local newspaper of its intention so to do anything to the contrary in this or any other Ordinance notwithstanding to raise by means of bills such further sum or sums over and above the limit fixed by this or any other Ordinance as the Lieutenant-Governor may sanction."

Title.

2. This Ordinance may be cited as the Johannesburg Municipality Borrowing Powers Further Amendment Ordinance 1904 and shall be read as one with the Johannesburg Municipality Borrowing Powers Ordinance 1903 and the Johannesburg Municipality Borrowing Powers Amendment Ordinance 1903.

No. II (Private) of 1904.]

[Promulgated 12th August, 1904.]

ORDINANCE

TO PROVIDE FOR THE INCORPORATION OF THE INSTITUTE OF LAND
SURVEYORS.

Assented to 10th August, 1904.

WHEREAS provision has been made for the admission of persons to practise as land surveyors in this Colony ;

And whereas it is expedient for the maintenance and advancement of the science of surveying for correct and uniform practice and discipline amongst the members of the profession of land surveyors and for promoting the formation of a library and the collection of information relating to the science of surveying to establish and incorporate an institute of land surveyors for the promotion of the said objects ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows ;

1. A society consisting of a president vice-president a council and members is hereby established in the Transvaal. The said society shall include only land surveyors duly admitted and authorized to practise as such in the said Colony and shall be a body corporate by the name of the "Institute of Land Surveyors of the Transvaal" and by such name shall have perpetual succession and may adopt and have a common seal and shall be capable both of purchasing and holding property movable and immovable and of selling mortgaging transferring leasing or otherwise disposing of any such property and of suing and being sued in its corporate capacity and of doing all matters and things incidental or appertaining to a body corporate ; provided that it shall not be lawful for the said institute to sell mortgage transfer lease or otherwise dispose of any immovable property to which it may become entitled without the concurrence of two-thirds of the members present at a general meeting.

Incorporation of the Institutes of Land Surveyors of the Transvaal as a body corporate.

2. The objects for which the institute is established are inter alia as follows :—

Objects of institute.

(a) To support and protect the character and interests of the profession of land surveying.

(b) To promote honourable practice to repress malpractice and to decide all questions of professional usage and courtesy between or amongst land surveyors.

(c) To control and exercise discipline over the conduct of members of the profession.

(d) To consider all questions affecting the interests of the profession and to initiate and watch over and if necessary to petition the Lieutenant-Governor the Legislative Council or any other competent body or person in relation to general

measures affecting the profession ; to procure changes of law or practice ; and the promotion of improvements in the principle and administration of the law as may be considered desirable and expedient.

(e) To circulate information either orally or by means of printed matter of scientific discovery and advancement in the mathematical and exact sciences in so far as the interests of the profession may be thereby advanced.

(f) To hold meetings of members of the profession and other persons possessing knowledge which it may be advantageous to the members of the profession to possess and to discuss any subjects thereat which the general body of members may consider advisable.

(g) To print publish and circulate minutes of the proceedings at such meetings and of all papers read thereat or contributed thereto.

(h) To acquire by purchase donation or otherwise a library suitable for the purpose of the institute and from time to time to add thereto.

(i) To provide rooms and other facilities for the holding of meetings of the institute and other purposes ; for the sale of any property thereof which it has been decided by the members to dispose of and other like matters.

(j) To acquire by purchase take on lease or otherwise lands buildings and all other property real or personal which the institute for the purposes thereof may from time to time think proper to acquire and which may be lawfully held by it.

Admitted
land sur-
veyors to be
members of
the institute.

3. Every person who is now or shall hereafter be admitted as a land surveyor in the Transvaal shall *ipso facto* be a member of the institute and shall receive from the council thereof a certificate of membership. No charge for the issue of such certificate shall be made to land surveyors admitted prior to the promulgation of this Ordinance but a fee of two pounds two shillings shall be payable to the council for every such certificate issued to persons admitted subsequent to such promulgation.

Election of
a president
vice-presi-
dent and
council.

4. (1) The council of the said institute including a president and vice-president shall consist of eleven members to be elected by vote of the members of the institute at a general meeting thereof which meeting shall be held at Johannesburg within one month after the promulgation of this Ordinance. The president shall be elected at such general meeting by the members and a vice-president and secretary shall be elected by the members of the council from amongst their number.

(2) The first general meeting of the institute shall be convened by W. K. Tucker Esquire C.M.G. who shall act as temporary president thereof till the election of a permanent president and by E. W. Ferguson Esquire who shall act as temporary secretary till the election of a permanent secretary.

(3) The said W. K. Tucker and E. W. Ferguson shall give due notice by letter to each member of the institute and by publication of a notice in the *Gazette* not less than ten clear days before the holding of the general meeting mentioned in the preceding sub-section. Such notice shall state the time place and date of

meeting and it shall be sufficient for the notice by letter to be posted to the last known address of each member.

5. A general meeting shall be held once a year as nearly as may be twelve months after the preceding general meeting. Such general meeting shall be convened by the president for the time being and the secretary shall issue notices of such meeting to each member giving the date time and place thereof at least fourteen clear days before such date. It shall be sufficient to post such notices to the addresses given to the institute by the members.

Annual
general
meeting.

6. (1) The council shall have control over the conduct and behaviour of the members of the institute and over the funds and affairs of the institute generally in so far as such control may be committed to it by a vote of a general meeting and shall submit for the approval of a general meeting rules or bye-laws dealing therewith which rules and bye-laws shall then be binding upon all members of the institute.

Powers of
the council.

(2) It shall be entitled to exercise the following powers without such a vote ;

(a) to hire and take on lease for any period not exceeding five years any stands erven lands buildings rooms or any other immovable property and to pay rent for the same ;

(b) to sell any movable property of the institute ;

(c) to let any of the immovable property of the institute for any period not exceeding five years upon such terms and conditions as may be desirable ;

(d) to take the necessary steps to obtain the suspension of members from practice and their expulsion from the institute for any of the causes assigned in the said bye-laws.

7. The following acts and practices whether of commission or omission upon the part of any land surveyor being a member of the institute shall be offences under the provisions of this Ordinance and if found guilty by the Supreme Court of having committed or engaged in any one or more of such acts or practices he shall be liable to be suspended from practice for any period that may be decided upon by the court or to be expelled from the institute as the court may direct.

Offences.

(a) Agreeing to share fees or entering into partnership in any work requiring the special qualifications of a land surveyor with any person not admitted to practice as a land surveyor ; provided that nothing herein contained shall prevent a land surveyor from entering into partnership with a civil mining or hydraulic engineer holding a diploma to the satisfaction of the council.

(b) Signing diagrams purporting to represent any survey work performed by himself which work shall not have been carried out under his personal supervision and direction.

(c) Directly or indirectly paying any person a commission for bringing him work or giving any person monetary or other valuable consideration as a remuneration for bringing him work or inducing other persons to give him work.

(d) Improperly obtaining or attempting to obtain survey work.

(e) Performing a survey in connection with rights which are the subject of dispute or litigation upon condition that only in the event of dispute or litigation ending favourably for the party for whom the survey is performed shall payment be made for the survey.

(f) Executing a survey with gross carelessness and not providing checks sufficient for a proper determination of the points to be located and for the purpose of testing the accuracy of his calculations whereby an incorrect diagram is passed for registration.

(g) Not making enregistering and carefully preserving a record of all observations field work calculations and draughting in connection with or resulting from any work performed by him as a land surveyor.

(h) Making or enregistering any records or calculations which are fictitious and untrue in connection with any surveys performed or alleged to have been performed by him.

(i) Conducting himself dishonourably in connection with the performance of any work by him as a land surveyor.

(j) Wilfully refusing or neglecting to carry out and perform any order or bye-law lawfully adopted and established by the institute in meeting assembled regarding any point of professional practice ; but the receipt of a fee lower than that provided for under any tariff fixed by any bye-law, shall not in itself be an offence against professional practice.

(k) Wilfully refusing or neglecting to produce any field books records calculations diagrams or other documents in his possession when required so to do by the council.

(l) Engaging in any practices or performing any acts similar to or having a tendency to end in a result similar to the practices and acts prohibited in the foregoing sub-sections.

Quorum of council may hold inquiries into the conduct of members may summon members to give evidence order production of documents and administer oaths.

8. For the purpose of inquiring into and exercising control over the conduct and behaviour of the members of the institute a quorum of the council in meeting assembled shall be empowered to summon members of the institute as witnesses to appear before it ; to hear and take evidence and to order the production of any field books records calculations diagrams and documents or writings in the possession of such members. All evidence so taken shall be recorded in writing and the chairman of the meeting aforesaid shall be and is empowered to administer oaths to the witnesses present and giving evidence before the council at such proceedings. Any member of the institute whose conduct is being inquired into shall be cited to appear before the council to answer to any charge made or to defend himself against any proceedings taken against him and shall be entitled to produce evidence and call witnesses on his behalf.

Suspension of members for contravention of bye-laws etc. issued under Ordinance.

9. In the event of any member of the institute being in the opinion of the council guilty of any act or omission prohibited by this Ordinance or offending against any bye-law or regulation framed thereunder the council may determine to cause such member to be cited before the Supreme Court of this Colony to answer any charge made against him and to show cause why a sentence of suspension from practice should not be pronounced against him

by such court. All such proceedings shall be taken in the name of the council of the institute. Upon the hearing of any such matter the court may suspend such member from practice or make such other order as may seem fitting and may further make such order as to costs as may seem meet.

10. In case any member of the institute shall in consequence of the order of court be suspended from or rendered incapable of practising as a land surveyor in this Colony such person shall during such time as he is suspended from practice cease to be a member of the institute.

Suspended members to cease to be members of institute.

*11. The council may from time to time subject to the approval of the Lieutenant-Governor frame alter amend and administer bye-laws and regulations for carrying into effect the objects and purposes of the institute and for regulating its proceedings. Such bye-laws and regulations shall when adopted at a general meeting of the institute and approved by the Lieutenant-Governor and published in the *Gazette* have the force of law and shall be binding upon all members of the institute in practice in so far as the same be not in conflict with the terms of this Ordinance.

Council may frame bye-laws and regulations.

12. This Ordinance may be cited as the Institute of Land Surveyors' Incorporation Ordinance 1904. Title.

* For bye-laws and regulations under this section see Govt. Notices No. 200 of 1905 (*Gazette*, 3/3/05), No. 888 of 1908 (*Gazette* 11/9/08).

No. III (Private) of 1904.]

[Promulgated 26th August, 1904.]

ORDINANCE

TO PROVIDE FOR THE REGISTRATION OF ACCOUNTANTS IN THE
TRANSVAAL.

Assented to 15th August, 1904.

WHEREAS it is expedient to provide for the registration of persons publicly practising or entitled to practise publicly as Accountants in the Transvaal so as to distinguish qualified from unqualified persons :

And whereas it is necessary to provide a qualification for admission to the Register of Accountants :

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

User of title
of public
accountant
restricted.

1. After the passing of this Ordinance no person shall describe himself or hold himself out as an accountant or as a public accountant or as an auditor or use any name title addition or description or letters indicating that he is an accountant by profession or a public accountant or an auditor whether by advertisement by description in or at his place of business or residence by any document or otherwise unless he is registered as a public accountant in pursuance of this Ordinance ; provided always that this section shall not prevent any person employed exclusively at a salary on accounts and not carrying on business on his own account from describing himself as an "accountant" in respect of or in relation to his occupation.

Penalty for
infringement.

2. Any person not registered as a public accountant in pursuance of this Ordinance and describing himself or holding himself out as an accountant or as a public accountant or as an auditor so as to contravene any of the provisions of section *one* hereof shall be liable to a fine not exceeding one hundred pounds for each offence and in default of payment to imprisonment for a period not exceeding three months.

Incorporation
of the
Transvaal
Society of
Accountants.

3. The persons registered as hereinafter provided are hereby constituted and incorporated into one body corporate by the name of "The Transvaal Society of Accountants" with perpetual succession and the right to use a common seal and to sue and be sued in its corporate capacity and the said body corporate shall be capable in law of taking and holding any real or personal property for the benefit and purposes of the Society with power to dispose thereof but so that the Society shall apply its profits or other income in promoting the objects of the Society and shall not at any time pay any dividend to its members.

Appointment
of the
Provisional
Council.

4. Upon the passing of this Ordinance there shall come into existence a Provisional Council consisting of the following persons namely :

Alexander Aiken
 Robert Baikie
 James Alexander Boyd
 John Gordon Carter
 John Dougall
 Frederick Richard Lynch
 John Hastings Muir
 Howard Pim
 Frank Raleigh
 Charles Stuart
 Samuel Thomson
 Thomas Watson

who shall be the first members of the Transvaal Society of Accountants and shall forthwith cause their names to be entered upon the register thereof. The Provisional Council shall subject to the provisions of this Ordinance exercise all the powers of the Society until the Council hereinafter mentioned shall come into office and shall fill any casual vacancies in their number subject to the approval of the Lieutenant-Governor.

5. Upon a day to be fixed by the Lieutenant-Governor but not later than one month from the passing of this Ordinance the Provisional Council shall meet at Johannesburg and shall at such meeting elect a chairman.

Proceedings
 of the
 Provisional
 Council.

In the absence of the chairman at any meeting the members of the Provisional Council present shall elect one of their number to preside.

At any meeting of the Provisional Council five members personally present shall constitute a quorum and a majority of the members present shall decide every question to be decided by such meeting except admission to the Register which shall require a majority of the whole Council and twenty-one days' notice shall be given of all meetings at which the admission of members is to be dealt with.

Subject to the provisions of this Ordinance the Provisional Council are hereby empowered to regulate the proceedings at their meetings and the mode of carrying on the business of the Society and shall remain in office until six months from the date of the passing of this Ordinance.

The Provisional Council shall have power to appoint a clerk or registrar and such other officers as they may deem necessary for the purposes of this Society.

6. The Provisional Council shall open a Register in which every person shall be entitled to be registered as a public accountant in pursuance of this Ordinance who proves to the satisfaction of the Provisional Council within six months next after the passing of this Ordinance that at the date of the passing of this Ordinance he was resident in the Transvaal and (a) was a member of the Transvaal branch of the Society of Accountants and Auditors of England or the Society of Accountants in Edinburgh incorporated by Royal Charter 1854 or the Institute of Accountants and Actuaries in Glasgow incorporated by Royal Charter in 1855 or the Society of Accountants in Aberdeen incorporated by Royal Charter 1867 or the Institute of Chartered

Persons
 entitled to be
 registered
 by the
 Provisional
 Council.

Accountants in England and Wales incorporated by Royal Charter 1880 or the Institute of Chartered Accountants in Ireland incorporated by Royal Charter 1888 or the Society of Accountants and Auditors England incorporated 1885; or (b) was publicly and bona fide practising as a public accountant in the Transvaal at the date of the passing of this Ordinance; or (c) shall make written application to be placed on the Register and shall be considered by a majority of the Provisional Council a fit person to be admitted to the Register by virtue of his position and past experience.

Persons entitled to be registered by the Council.

7. Upon the expiration of six months from the date of the passing of this Ordinance no person shall be entitled to be registered as a public accountant unless he shall prove to the satisfaction of the Council hereinafter mentioned that at the date upon which his application for registration is made he is resident in the Transvaal and (a) is a member of any Society or Institute of Accountants whose membership is declared to be sufficient by the bye-laws of the Society for the time being in force or (b) shall have produced a certificate from the Council that he has passed the examinations from time to time prescribed by the bye-laws and shall have satisfied the Council that he has had such practical experience in the business of a public accountant as under the bye-laws of the Society renders him admissible for registration.

Election of the Council.

8. On such day during the currency of the sixth month next after the date of the passing of this Ordinance as the Provisional Council shall appoint the Provisional Council shall convene a meeting in Johannesburg of all persons whose names appear upon the Register at the date on which the notices convening such meeting are issued and at such meeting the persons present shall proceed to elect in manner to be provided by the Provisional Council a Council of twelve members which shall come into office upon the expiration of six months from the date of the passing of this Ordinance and thereupon the Provisional Council shall cease to exist. This* Council shall hold office until the date of the annual general meeting following upon which date the members of the Council shall retire from office but shall be eligible for re-election.

Registration fees.

9. No person shall be placed upon the Register until he has paid such registration fees as shall be fixed by the Provisional Council or Council as the case may be.

Offences.

10. The following acts and practices whether of commission or omission upon the part of any public accountant or auditor shall be offences under the provisions of this Ordinance and if found guilty by the Supreme Court of having committed or engaged in any one or more of such acts or practices the said public accountant or auditor shall be liable to be suspended from practice for any period that may be decided on by the said court or to have his name removed from the Register as hereinafter provided:

(a) Allowing any person not being a member of the Society or in partnership with himself as a public accountant to practise in his name as a public accountant.

* As in *Gazette*.

(b) Directly or indirectly allowing a solicitor broker auctioneer or other principal or agent not being his partner to participate in the profits of his profession or directly or indirectly accepting any share of the profits from the professional work of a solicitor broker auctioneer or other principal or agent not being his partner or any commission or bonus thereon; provided that nothing in this Ordinance shall be construed to prevent a registered public accountant from carrying on any other business in addition to that of accountancy.

(c) Signing accounts statements reports or other documents purporting to represent any accountancy-work performed by himself which work shall not have been carried on under his personal supervision or direction.

(d) Directly or indirectly paying any person a commission for bringing him work giving any person monetary or other consideration as a remuneration for bringing him work or inducing other persons to give him work.

(e) Improperly obtaining or attempting to obtain work.

(f) Performing any accountancy work in connection with any matter which is the subject of dispute or litigation upon condition that only in the event of the said dispute or litigation ending favourably for the party for whom the work is performed shall payment be made for such work.

(g) Conducting himself dishonourably in connection with any work performed by him as a public accountant or auditor.

(h) Wilfully refusing or neglecting to carry out and perform any bye-law or order lawfully adopted and established by the Society regarding any point of professional practice.

(i) Engaging in any practices or performing any acts similar to those practices and acts prohibited in the foregoing subsections.

11. For the purpose of inquiring into and exercising control over the conduct and behaviour of the members of the Society the Council in meeting assembled shall be empowered to summon members of the Society and others as witnesses to appear before it; to hear and take evidence and to order the production of any books documents and papers in the possession of such members. All evidence so taken shall be recorded in writing and the chairman of the meeting aforesaid shall be empowered to administer oaths to the witnesses called to give evidence before the Council at such proceedings. Any member of the Society whose conduct is being inquired into shall be cited to appear before the Council to answer to any charge made or to defend himself against any proceedings taken against him and shall be entitled to produce evidence and call witnesses on his behalf.

Inquiries by Council into conduct of members.

12. In the event of any member of the Society being in the opinion of the Council guilty of any act or omission prohibited by this Ordinance or offending against any bye-law or regulation framed thereunder the Council may call upon such member to show cause to the Supreme Court of this Colony why he should not be prohibited from practising as a public accountant

Proceedings for suspension and removal of members.

and why his name should not be removed from the Register. All such proceedings shall be taken in the name of the Council of the Society. Upon the hearing of any such matter the court may suspend such member from practice either permanently or temporarily and remove his name from the Register or make such other order as may seem fitting and may further make such order as to costs as may seem fit.

Penalties.

13. In case any member of the Society shall in consequence of the order of court be suspended from or rendered incapable of practising as a public accountant in this Colony such person shall during such time as he is suspended or is incapable cease to be a member of the Society.

Persons having no claim against the assets of the Society.

14. No claim against the assets of the Society shall exist in the case of or be made by any person whose name has ceased to appear upon the Register of the Society or the executors administrators heirs or assigns of such person.

Title allowed to member of the Society.

15. Every person whose name appears upon the Register shall be entitled to style himself Registered Public Accountant (Transvaal).

Rules and regulations for examinations.

16. The Council shall upon being elected to office forthwith frame rules and regulations for regulating the examinations or equivalents thereto which shall be required of applicants for registration in pursuance of section *seven* of this Ordinance.

Powers of the Council.

17. The Council shall have power to do each and all of the following acts ;

- (a) to manage and superintend the affairs of the Society ;
- (b) to appoint and remove any officers and servants of the Society and to determine the duty salary and remuneration of the same ;
- (c) to accept or refuse for good cause any application for registration made in pursuance of this Ordinance ;
- (d) to hold examinations for applicants for registration and to grant certificates to such persons as have satisfied the examiners in such examinations ;
- (e) generally to exercise all the powers of the Society except such powers as are expressly reserved by this Ordinance to the Society in general meeting.

General meetings.

18. There shall be held once in each year a general meeting of the Society whereat every accountant upon the Register who is not in arrear with any subscription or sum payable by him to the Society shall be entitled to be present and to vote. The quorum for such general meeting shall be fixed by the bye-laws.

Any question to be decided at such meeting shall be decided by a majority of the members present thereat.

The Council shall prepare as at the thirty-first December in each year an account of all moneys received and expended by the Society and submit such account duly audited to the Society at such general meeting for discussion and approval. The officers of the Society shall be elected annually at this meeting.

It shall be lawful for any member or members of the Society at such meeting to move any resolution which is not inconsistent with the purposes and provisions of this Ordinance provided that

no member or members shall have the right to introduce to such meeting or submit for discussion by such meeting any act done by the Council in pursuance of the power conferred by sections *eleven*, *twelve* and *seventeen* sub-sections (c) and (d) of this Ordinance.

19. The Provisional Council shall forthwith prepare draft bye-laws for the Society and shall convene on due notice a special general meeting of the Society in Johannesburg to be held not later than six months from the date of this Ordinance for the purpose of considering and if approved adopting the said bye-laws. The notice convening such meeting shall be sent to the registered address of each member of the Society not later than twenty-one days before the day appointed for such meeting and shall be accompanied by a copy of the proposed bye-laws.

Meeting to pass bye-laws.

A majority of the members personally present at such meeting shall be sufficient to determine all matters to be decided thereat and the non-receipt of the said notice or copy of the proposed bye-laws by any member or members shall not invalidate the proceedings at the said meeting provided that twelve members be present thereat.

*20. The Society may from time to time subject to the approval of the Lieutenant-Governor make bye-laws for any of the following purposes provided such bye-laws be not inconsistent with the provisions of this Ordinance ;

Purposes for which bye-laws may be made.

- (a) for regulating the conditions and mode of admission to the Register of the Society ;
- (b) for fixing the registration and other fees and the times for payment of the same ;
- (c) for regulating the time mode and place of summoning and holding ordinary and special general meetings and the quorum to be present thereat and the mode of voting and the conduct of proceedings at any such meetings and the regulations for the adjournment thereof ;
- (d) for regulating the meetings of the Council and the quorum to be present thereat.
- (e) for regulating the number of members of the Council and their periodical retirement and the mode of nomination of members of the Society for election thereto and the mode of filling casual vacancies thereon ;
- (f) for regulating the service under articles of clerks of members of the Society and the forfeiture of such articles for misconduct or other sufficient cause ;
- (g) for regulating the times and places for holding examinations of applicants for registration and the subjects and the manner of conducting or holding any such examinations and for fixing a reasonable fee to be paid by applicants and others and the conditions on which the examiners shall hold office and the remuneration ;
- (h) for regulating the mode of election or appointment of the president and two vice-presidents of the Council ;

* For bye-laws under this section see Govt. Notices No. 295 of 1905 (*Gazette*, 31/3/05), No. 175 of 1907 (*Gazette*, 15/2/07), No. 521 of 1909 (*Gazette*, 14/5/09), No. 431 of 1910 (*Gazette*, 29/4/10).

(i) and generally such bye-laws as from time to time seem to the Society requisite for the better execution of this Ordinance and the furtherance of the objects of the Society.

Such bye-laws and regulations shall when adopted at a general meeting of the Society and approved by the Lieutenant-Governor and published in the *Gazette* have the force of law and shall be binding upon all members of the Society in so far as the same are not in conflict with the terms of this Ordinance.

Alteration of
bye-laws.

21. No alteration in the bye-laws as adopted at the special general meeting referred to in section *nineteen* shall be made save by a majority of two-thirds of the members present at special general meeting convened for the purposes of sanctioning such alteration. Notice of such meeting and of the alteration or alterations to be proposed thereat shall be sent by post to the registered address of each member of the Society at least twenty-one days before the date fixed for the meeting but the non-receipt of such notice by any member or members shall not invalidate the proceedings thereat.

Title.

22. This Ordinance may be cited for all purposes as the Accountants Ordinance 1904.

No. IV (Private) of 1904.]

[Promulgated 26th August, 1904.]

* ORDINANCE

TO CONFER FURTHER POWERS ON THE MUNICIPALITY OF
JOHANNESBURG.

Assented to 17th August, 1904.

WHEREAS it is desirable to add to and amend the Johannesburg Municipal Statutes 1901 to 1903 ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

8. Sub-section (1) of section *fifty-two* of the Johannesburg Municipality Borrowing Powers Ordinance 1903 shall be and is hereby amended by substituting for the words “ten thousand pounds” the words “two hundred thousand pounds” and by the deletion therefrom of the words “or extend” to the end of the said sub-section.

Amendment
of sub-section
(1) of section
fifty-two of
the Johannes-
burg Muni-
cipality
Borrowing
Powers
Ordinance
1903.

* The whole of this Ordinance, with the exception of sec. 8, repealed by Ord. No. II (Priv.) of 1906, sec. 1.

No. V (Private) of 1904.]

[Promulgated 26th August, 1904.]

ORDINANCE

TO PROVIDE FOR THE CONTINUANCE EXTENSION AND GOVERNMENT OF THE TOWNSHIPS OF GERMISTON AND GEORGETOWN IN THE WITWATERSRAND AREA.

Assented to 17th August, 1904.

WHEREAS a company known as the Simmer and Jack Proprietary Mines Limited has laid out and established on a certain portion of the farm Elandsfontein No. 147 in the Witwatersrand District of which the said company is the freehold owner a township known as the township of Germiston and has sold leased or otherwise dealt with the same as stands for building and residential purposes ;

And whereas a company known as the Consolidated Goldfields of South Africa Limited has laid out and established on a certain portion of the farm Driefontein No. 148 in the Witwatersrand District of which the said company together with the company known as the Transvaal Lands and Mines Proprietary Syndicate Limited and a firm called or known as Messrs. S. Neumann & Co. are the freehold owners of a township known as the township of Georgetown and have sold leased or otherwise dealt with the same as stands for building and residential purposes ;

And whereas the mining rights in and under the said townships of Germiston and Georgetown respectively are vested as to the said township of Germiston in three companies, known as the South Rose Deep Limited the Simmer and Jack East Limited and the Rose Deep Limited and as to the township of Georgetown in a company known as the Simmer and Jack East Limited under and by virtue of certain mynpachts granted by the late Government of the South African Republic ;

And whereas the rights of the Simmer and Jack Proprietary Mines Limited and the Consolidated Goldfields of South Africa Limited to lay out and establish or to permit to remain laid out and established the said townships on the said ground and also the rights to mine under the ground on which the said townships are situated have been called into question and it is desirable that the validity of such rights shall be finally established ;

And whereas it is desirable to provide for the extension of the township of Germiston ;

And whereas the freehold title on which the proposed extensions of the said township are situate is vested in the Simmer and Jack Proprietary Mines Limited ;

And whereas two plans have been prepared one showing the township of Germiston and Georgetown as constituted and established at the date of the passing of this Ordinance and referred to herein as the plan No. 1 and the other showing the extensions of the said township of Germiston as provided for in this Ordinance and referred to herein as the plan No. 2 ;

And whereas the Simmer and Jack Proprietary Mines Limited and the Consolidated Goldfields of South Africa Limited have in consideration of the provisions contained in this Ordinance agreed to execute certain works and to make certain reservations of land and contributions of money to and in favour of the municipality of Germiston :

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

GENERAL.

1. In this Ordinance unless the context otherwise requires:— Interpretations.
 “the council” means and includes the council of the municipality of Germiston ;
- “the Goldfields Company” means and includes the Consolidated Goldfields of South Africa Limited and any other companies whether gold mining or others and whether existing or hereafter to be formed under the chief control or management of the Goldfields Company ;
- “the Proprietary Company” means and includes the Simmer and Jack Proprietary Mines Limited and any other companies whether gold mining or otherwise and whether existing or hereafter to be formed under the chief control or management of the Proprietary Company ;
- “the Land Syndicate” means the Transvaal Land and Mines Proprietary Syndicate Limited ;
- “the freeholders” means the Proprietary Company and the Goldfields Company and the Land Syndicate and Messrs. S. Neumann & Co. and their assigns.

PART I.

PRESENT TOWNSHIPS OF GERMISTON AND GEORGETOWN.

2. The said plans Nos. 1 and 2 shall be forthwith deposited in the office of the Registrar of Mining Rights and shall be binding on the council and the freeholders and all other persons having rights and interests within the townships of Germiston and Georgetown and the extensions of the township of Germiston called West Germiston East Germiston and North Germiston as shown on the said plans or who may be otherwise affected by the provisions of this Ordinance. Plans.

3. Subject to the provisions of this Ordinance the townships of Germiston and Georgetown as laid out and established at the date of the passing of this Ordinance and shown on the said plan No. 1 shall be deemed to be for all purposes lawfully so laid out and established and shall remain and be the property of the Proprietary Company the Goldfields Company the Land Syndicate and Messrs. S. Neumann & Co. and their assigns respectively anything in Law No. 15 of 1898 or any other law to the contrary notwithstanding provided that all transfers and Townships of Germiston and Georgetown legalized.

leases made or granted by any of the said companies or firm and all agreements entered into by them or any of them with any person whereby any rights or privileges were or purported to be acquired in over or with reference to the said townships or any stands or lots therein or portions thereof shall remain of full force and effect notwithstanding anything contained in this Ordinance.

Protection of township owners against actions at law.

4. No action or proceedings shall be brought or maintained in any of the courts of this Colony at the suit of the Government or any other person against the freeholders or any of them by reason of their having established the townships of Germiston and Georgetown respectively on ground held under mining title or by reason of their having sold stands on such ground or by reason of any other matter whatsoever of or connected with the laying out establishing dealing with or continuance of the said townships respectively.

Proceeds of rents accruing or to accrue in respect of existing townships of Germiston and Georgetown.

5. The freeholders shall be respectively entitled to collect receive and apply to their own use respectively all rents already accruing or hereafter to accrue in respect of the existing townships of Germiston and Georgetown as shown on the said plan No. 1 and may sell lease or otherwise deal with in such manner as they may respectively think fit such part of the said townships as are shown on the said plan No. 1 as laid out in stands and at present unsold.

Undermining rights under Germiston and Georgetown secured.

6. The right of mining under the ground now occupied by the said township of Germiston as had and possessed by the South Rose Deep Limited the Simmer and Jack East Limited and the Rose Deep Limited and the right of mining under the ground now occupied by the said township of Georgetown as had and possessed by the Simmer and Jack East Limited under Law No. 15 of 1898 or any other law relating to the mining for precious minerals shall be and is hereby reserved to the South Rose Deep Limited the Simmer and Jack East Limited and the Rose Deep Limited their successors and assigns respectively subject always to the payment of such licence or other moneys as may from time to time be due under the said laws provided that nothing herein contained shall be taken to modify or affect any special contract or agreement entered into or any right lawfully acquired by or against the Goldfields Company the Proprietary Company the South Rose Deep Limited the Simmer and Jack East Limited or Rose Deep Limited or any one or more of such companies with reference to such mining as aforesaid or with reference to the compensation payable in the event of damage by reason of any mining operations or any other matters incidental thereto.

PART II.

ADMINISTRATION AND CONTROL.—PRESENT TOWNSHIPS AND EXTENSIONS.

Administration of Germiston Georgetown and extensions.

7. The administration and control for all public and municipal purposes of the said two townships and of the extensions of the township of Germiston referred to in section *eight* of this Ordinance shall subject to the provisions of this Ordinance be vested in the council provided always :—

(a) That no alteration or deviation in any watercourse spruit storm-ditch running through the said townships and the extensions thereof as shown on the plans hereinbefore referred to at their sole cost and expense ; provided however that the proper out by the council save with the consent in writing of the freeholders or such one or more of them as may be affected thereby.

(b) That the freeholders shall forthwith place in proper repair (providing for a proper and satisfactory gradient) maintain and keep free from deposits of silt or mud the storm-ditch running through the said townships and the extensions thereof as shown on the plans hereinbefore referred to at their sole cost and expense ; provided however that the proper cleansing from time to time of the said storm-ditch shall devolve upon the council at its sole cost and expense ; and provided further that the freeholders shall notwithstanding anything contained in this Ordinance be and remain responsible and liable for any loss or damage which may be caused by storm-water through any breach of the said storm-ditch.

(c) That the freeholders shall in consideration of this Ordinance subject however to the provisions thereof be relieved from all liability (if any) now imposed or incumbent on them in respect of the construction maintenance repair or alterations of any street thoroughfare square open space park sewer drain watercourse bridge culvert or other municipal work or in respect of the general municipal or public administration of the said townships and extensions saving always the right of the council to impose rates under the Local Authorities Rating Ordinance 1903 or any amendment thereof on the property or rights of the freeholders.

(d) That the grant dated thirty-first July 1897 whereby the late Government of the South African Republic granted to the Proprietary Company certain rights in respect of the fixing of poles and carrying of electric wires in and over the said townships and the land adjacent thereto shall remain of full force and effect subject to the provisions and conditions contained in the said grant.

PART III.

EXTENSIONS OF GERMISTON.

*8. Notwithstanding anything to the contrary contained in Law No. 15 of 1898 or any other law relating to the sale and disposal of stands on proclaimed goldfields or to the occupation thereof it shall be lawful for the Lieutenant-Governor subject to the provisions of this Ordinance to proclaim stand townships to be called or known as West Germiston East Germiston and North Germiston respectively on the following pieces of ground :—

Extensions of
Germiston.

* West Germiston and East Germiston proclaimed stand townships by Proc. (Admn.) No. 82 of 1904, and North Germiston by Proc. (Admn.) No. 13 of 1908. See also Act No. 30 of 1909, sec. 2.

(a) The piece of ground held under mining title by the South Rose Deep Limited bounded on the north-east side thereof by the present boundary of the township of Germiston on the east side thereof by the present boundary line of the township of Georgetown on the south side thereof by certain ground held under claim licence by a company known as the Rand Victoria East Limited on the west and north-west side thereof by the old fence of the Central South African Railways Cape and Natal Railway line and on the north and north-east sides thereof by certain ground belonging to Phenie Clark situated on the ground held under mining title by the South Rose Deep Limited as the same is delineated and shown on the said plan No. 2 and thereon coloured pink.

(b) the piece of ground situate to the north-east of the existing township of Germiston held under mining title by the Simmer and Jack East Limited bounded on the south-western side and southern side thereof by the present boundary of the township of Germiston on the eastern and south-eastern side thereof by the present boundary line of the township of Georgetown and on the northern or north-eastern side thereof by ground held under mining title by Simmer and Jack East Limited the surface rights of which were recently acquired compulsorily by the Central South African Railways as the same is delineated and shown on the said plan No. 2 and thereon coloured blue.

(c) The piece of ground situated to the north of the existing township of Germiston held under mining title by the Rose Deep Limited bounded on the north and east by the Central South African Railway line and New Primrose freehold the south by claim ground of the Rose Deep Limited and freehold of the New Primrose Gold Mining Co. Limited and on the west by claim ground of the Rose Deep Limited as the same is shown on said plan No. 2 and thereon coloured green.

Provided that it shall not be lawful to issue or hold any trading licences in respect of any stand in or portion of the said extensions West Germiston East Germiston and North Germiston before and until the expiry of ten years reckoned from the date of the first public sale of stands in the said extensions respectively.

And provided that any lessee of any stand or portion of a stand in the said extensions West Germiston East Germiston and North Germiston shall have the right at any time during the continuance of his lease to capitalize the rent or stand licence moneys and so free himself from further liability to pay rent or stand licence by paying the Proprietary Company the sum of One Hundred Pounds (£100) sterling in respect of each such stand or portion of a stand such sum to be divided equally between the Proprietary Company and the Government and provided further that nothing in this or Law No. 15 of 1898 or any other law contained shall be taken to limit or prohibit in any manner whatsoever the rights to mine under the said extensions as had and possessed by the South Rose Deep Limited the Simmer and Jack East Limited and the

Rose Deep East Limited their successors or assigns on payment of such licence or other moneys as may be due under Law No. 15 of 1898 or any other law dealing with precious metals.

9. (a) The Proprietary Company shall reserve to the Government the pieces of ground within the extension called West Germiston and marked on the said plan No. 2 as reserved for public buildings and for the Education Department and the perpetual right of use and occupation of the surface thereof shall be and is hereby vested in the Government without any further transfer or conveyance.

Reservation of ground to Government municipality and public park.

(b) The Proprietary Company shall further immediately on the passing of this Ordinance reserve to the council the perpetual right of use and occupation for municipal buildings and such other public purposes as the council may deem fit of the surface of certain twelve stands being Nos. 211 to 222 both inclusive situate in the extension described herein as West Germiston which right shall be and is hereby vested in the council without any further transfer or conveyance.

(c) The Proprietary Company shall further reserve to the council for the purpose of a public park the perpetual right of use and occupation of the surface of that portion of the extension described herein as West Germiston in extent not less than four and a quarter acres forming one continuous whole shown on said plan No. 2 provided that no action shall be brought or maintained in any of the courts of this Colony against the freeholders by reason of the cancellation or extinction of what was commonly considered to be or known or on any plans of the township of Georgetown shown as a park and provided always that nothing contained in this section or any sub-section thereof shall affect or modify the right of mining under such pieces of ground as are reserved in sections *six* and *eight* of this Ordinance.

10. The Proprietary Company may sell lease or otherwise deal with such parts of the said extensions as are shown on the said plan No. 2 as laid out in stands other than and except the pieces of ground reserved for and vested in the Government or the council under the preceding section in such manner and on such terms and conditions as may be approved by the Lieutenant-Governor and the proceeds of any such sale and any premium moneys payable in respect of any lease or grants of any such ground shall belong to the Proprietary Company and may be applied by them in such manner as they may think fit and of the rents or stand licence moneys that may be payable on any such leases or grants one-half shall be payable by the Proprietary Company to the Government and the remaining half shall belong to the Proprietary Company provided that the Government's share of such rents as aforesaid as may have been received shall be payable to the Government on the first day of August and first day of February for each preceding half-year or in such other manner as the Government and the freeholders may mutually agree.

Proceeds of sales in extensions accrue to Proprietary Company plus half stand rents ; remaining half accrues to Government.

11. The Goldfields Company and the Proprietary Company shall jointly and severally be liable and responsible to the council for payment to the latter of the sum of twelve hundred pounds

Freeholders' contributions towards construction of bridges and roads.

(£1200) sterling for and in respect of the construction of bridges across the storm-ditch hereinbefore referred to and also for the sum of three thousand pounds (£3000) sterling for and in respect of the construction of roads and streets in the said extensions West Germiston and East Germiston payment of which sums shall take place when actually needed by the council for the said purposes.

Works to be executed by freeholders.

12. The freeholders shall when called upon by the council make and macadamise to the satisfaction of the council and at their own expense the roads in the extension marked green and called North Germiston as shown on said plan No. 2 and thereafter the said roads shall be maintained by the council.

Council may impose rates on stands in extensions.

13. It shall be lawful for the council forthwith on the passing of this Ordinance to impose rates on the stands in the said extensions under the Local Authorities Rating Ordinance 1903 or any amendment thereof as if they were stands not situated on ground held under mining title.

PART IV.

TRADING RIGHTS.

Trading rights legalized.

14. Under and by virtue of this Ordinance it shall be lawful to hold trading licences in terms of the laws of this Colony relative thereto in respect of all or any stand or stands in the townships of Germiston and Georgetown as shown on the said plan No. 1 hereinbefore referred to and after the prescribed period of ten (10) years as provided for in section *eight* of this Ordinance also in respect of all or any stand or stands in the extensions West Germiston East Germiston and North Germiston above referred to anything contained in Law No. 15 of 1898 or any amendment thereof notwithstanding.

PART V.

CONCLUSION.

Rights of the Crown.

15. Nothing in this Ordinance contained shall in any way affect the rights of His Majesty the King His Heirs and Successors or of any person except such as are mentioned in this Ordinance and those claiming by from and under them.

Title.

16. This Ordinance may be cited for all purposes as the Germiston and Georgetown Ordinance 1904.

1905.

No. 1 of 1905.]

[Promulgated 4th August, 1905.]

AN ORDINANCE

TO MAKE FURTHER PROVISION RELATING TO PROCEDURE
IN CIRCUIT COURTS.

Assented to 29th July, 1905.

WHEREAS it is necessary to make further provision relative to procedure in the Circuit Courts held under the Superior Courts Criminal Jurisdiction Ordinance 1903;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. Any process for compelling the attendance of witnesses to give evidence or to produce documents at any criminal proceedings held in any Circuit Court under the Superior Courts Criminal Jurisdiction Ordinance 1903 may be sued out of the Supreme Court or out of the Court of Resident Magistrate of the district in which a Circuit Court is to be held.

Suing out of process for witnesses in Circuit Courts in criminal cases.

2. All advocates and attorneys admitted and enrolled in the Supreme Court shall be entitled without any other admission or enrolment to practise respectively as advocates or attorneys in any Circuit Court aforesaid.

Practitioners in Circuit Courts.

3. This Ordinance may be cited for all purposes as the Circuit Courts Procedure Ordinance 1905 and shall be read as one with the Superior Courts Criminal Jurisdiction Ordinance 1903.

Title.

No. 2 of 1905.]

[Promulgated 8th September, 1905..]

*AN ORDINANCE

TO AMEND THE TOWN LANDS ORDINANCE 1904.

Assented to 31st August, 1905.

WHEREAS it is expedient to amend the Town Lands Ordinance and further to make special provision relative to town lands in certain Municipalities:

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. *Repealed by Act 25, 1909, section one.*

Power to Registrar of Deeds to grant certificate of registered title to town lands in certain cases. Special provisions relative to exchange of certain portion of town lands of Middelburg.

2. Whereas certain portions of the town lands to be transferred to the Council of the Municipality of Middelburg under the provisions of the Town Lands Ordinance 1904 have been allotted by the Crown for occupation by settlers but are subject to a reversionary interest of the said Council under section *eight* of the said Ordinance; and whereas the Commissioner of Lands on behalf of the Lieutenant-Governor has entered into an agreement to transfer to the said Council certain Crown land in or near the said Municipality more suitable for use by the said Council as town lands in consideration of a release by the Council to him of its reversionary interest aforesaid; it is hereby declared that the said agreement the terms of which are fully set forth in the First Schedule to this Ordinance shall be deemed to have been lawfully entered into between the parties thereto and is hereby confirmed as binding on the said parties and upon all other persons whatsoever and the farm Tweefontein and the portion of the farm Uitkyk referred to in the said agreement shall from and after the date of this Ordinance be deemed to be portion of the town lands of Middelburg and subject to all the provisions of the Town Lands Ordinance 1904 as amended by this Ordinance or any other law and the land known as the Keerom Land Settlement referred to in the said agreement and described in the plan annexed thereto shall on the date aforesaid be released from the operation of all the provisions of the said Ordinance.

* See Act No. 25 of 1909.

3. Whereas certain portions of the town lands to be transferred to the Council of the Municipality of Potchefstroom under the provisions of the Town Lands Ordinance 1904 have been allotted by the Crown for occupation by settlers but are subject to a reversionary interest of the said Council under section *eight* of the said Ordinance; and whereas the Commissioner of Lands on behalf of the Lieutenant-Governor has entered into an agreement to transfer to the said Council certain Crown land in consideration of a transfer by the Council of its interest in the lands allotted as aforesaid and for certain other considerations; it is hereby declared that the said agreement the terms of which are fully set forth in the Second Schedule to this Ordinance shall be deemed to have been lawfully entered into between the parties thereto and is hereby confirmed as binding on the said parties and upon all other persons whatsoever and the farms Hesse No. 80 and Nooitverwacht No. 721 referred to in the said agreement shall from and after the date of this Ordinance be deemed to be portion of the town lands of Potchefstroom and subject to all the provisions of the Town Lands Ordinance 1904 as amended by this Ordinance or any other law and the land known as the Mooibank Settlements referred to in the said agreement and described in the plan annexed thereto shall on the date aforesaid be released from the operation of all the provisions of the said Ordinance.

Special provisions relative to exchange of portion of the town lands of Potchefstroom.

4. No transfer duty stamp duty or any registration or other charges shall be paid on the transfer of any lands to the Council of any Municipality under the provisions of the Town Lands Ordinance 1904 or this Ordinance.

Transfer of land to local authorities under Town Lands Ordinances to be free of transfer duty stamp duty and other charges.

5. Section *eight* of the Town Lands Ordinance 1904 shall be and is hereby repealed.

Repeal of section *eight* of Ordinance No. 14 of 1904.

6. This Ordinance may be cited for all purposes as the Town Lands Amendment Ordinance 1905 and shall be read as one with the Town Lands Ordinance 1904.

Title.

FIRST SCHEDULE.

AN AGREEMENT made and entered into this Twelfth day of July 1905 between
ADAM JAMESON
in his capacity of the Commissioner of Lands of the Transvaal Colony (hereinafter referred to as the Government which said expression shall whenever used in this Agreement be deemed to mean and include the Government of the Transvaal Colony for the time being) of the one part and

THE COUNCIL OF THE MUNICIPALITY OF MIDDELBURG
in the District of Middelburg in the Eastern Transvaal duly constituted and elected as by Law required and acting herein through and by Oltman Charles

Weeber (Mayor) and John Campbell and Joseph Henry Laver Councillors in their respective capacities of the Mayor and two of the Councillors of the said Council being duly authorized thereto by Resolution of the said Council passed at a meeting thereof duly convened and held on the Twelfth day of July 1905 and intended to be duly advertised and countersigned as approved by the Lieutenant-Governor of the Transvaal Colony copy of which said Resolution is hereto annexed and certified as such under the hand of the Town Clerk of the said Municipality (hereinafter referred to as the Council which said expression shall wherever used in this Agreement be deemed to mean and include the Council of the Municipality of Middelburg their successors and assigns) of the other part.

Whereas the Government are the owners of certain lands in the District of Middelburg namely the farm Tweefontein No. 303 and portion of the farm Uitkyk No. 337 and also (subject to the interest of the Council arising under or by virtue of the Town Lands Ordinance 1904) of the Keerom Land Settlements all which said lands are shown upon the plan hereto annexed and are thereby referred to herein by way of identification only and subject to particular definition by legal survey and diagrams intended to be hereafter attached hereto;

And whereas the Council having duly come under the operation of the Municipal Corporations Ordinance 1903 are desirous of acquiring the said farm Tweefontein and the portion of the said farm Uitkyk to serve as Town Lands for the Town of Middelburg;

And whereas the Government for the furtherance and proper development of their scheme of Land Settlement are desirous of obtaining a release from the Council of their interest before mentioned in that portion of the Keerom Land Settlements which lies to the north-east of the red pencil line shown on the said plan;

And whereas with a view of effectuating the desires of the parties hereto the arrangements hereinafter expressed have been agreed between them;

Now therefore the parties hereto hereby mutually agree and declare as follows:—

1. The Government shall in consideration of the release by the Council expressed in Clause 4 hereof forthwith vest in the Council as the Local Authority of Middelburg aforesaid the said farm Tweefontein and the portion of the said farm Uitkyk aforesaid to serve as town lands for the town of Middelburg within the meaning and under the operation of the Town Lands Ordinance 1904 but subject to all servitudes rights and interests at present subsisting therein in favour of any persons other than the Government but free from the tenants' interests in the portion of Keerom Land Settlements aforesaid hereinafter mentioned.

2. The Government shall within a reasonable time give possession of the lands to the Council and such possession shall in respect of the portion of the Keerom Land Settlements aforesaid be free from all tenant interest of settlers thereon. All buildings, fencing and improvements now existing upon the portion of the Keerom Land Settlements aforesaid shall be deemed to pass with the land without any payment or liability for payment or compensation by the Council in respect thereof.

3. As regards the farm Tweefontein any burgher-right erven formerly portion of the said farm shall not be deemed to pass with or be included in the farm intended to be vested in the Council under Clause 1 hereof.

4. The Council shall in consideration of the gifts aforesaid and in pursuance of the power for this purpose vested in them by the Municipal Corporations Ordinance 1903 and with the consent of the Lieutenant-Governor of the said Colony testified by his signature to the Resolution of the Council hereinbefore referred to forthwith release to and in favour of the Government all the right title property claim and interest of the Council whether in possession reversion or expectancy arising under and by virtue of the Town Lands Ordinance 1904 and particularly under Section 8 thereof or in any manner whatsoever to of and in the portion of the Keerom Land Settlements which lies to the north-east of the red pencil line shown on the said plan to the intent that all such right title property claim and interest shall be merged and extinguished in the freehold of the said lands for the benefit of the Government and that such lands shall be absolutely freed and discharged therefrom and from all claims and demands by the Council arising now or hereafter in any manner whatsoever but subject to any servitudes existing in favour of any other persons.

5. Each of the parties hereto shall sign and pass all such transfers' documents and assurances obtain the approval of the Lieutenant-Governor hereto and do

all such acts as may be deemed necessary or expedient for the purpose of simultaneously fully and effectually carrying out and concluding the several provisions of this agreement in proper form and manner according to the laws of this Colony.

6. The legal costs and expenses incurred in carrying out the last preceding clause and in the preparations and completion of this agreement and the expenses of all necessary surveys and diagrams shall be borne and paid by the Government.

Thus done and passed at Middelburg, Transvaal, on the day month and year first aforesaid in the presence of the subscribing witnesses.

As Witnesses :

HUTTON WATERMEYER.
B. J. v. d. HORST, jun.

O. C. WEEBER,
Mayor.
J. H. LAVER,
Councillor.
JNO. CAMPBELL,
Councillor.

Signed at Pretoria the 13th day of July 1905.

ADAM JAMESON.

As Witnesses to the Signature of the before-named Adam Jameson :

G. R. HUGHES.
A. E. CHARTER.

ANNEXURE TO FIRST SCHEDULE.

Minutes of a Special Meeting of the Council of the Municipality of Middelburg held in the Municipal Offices on the 12th July, 1905.

Proposed by Mr. Hanna.

Seconded by Mr. Vervuil.

Resolved : That the Mayor and Councillors Campbell and Laver be authorised to sign all agreements and leases relating to the Town Lands as already dealt with by the Council.

O. C. WEEBER,
Mayor.
HUTTON WATERMEYER,
Town Clerk.

Approved :
ARTHUR LAWLEY,
Lieutenant-Governor.

13th July, 1905.

SECOND SCHEDULE.

AGREEMENT OF SALE AND EXCHANGE made and entered into on this tenth day of July One thousand Nine hundred and Five between

ADAM JAMESON

in his capacity as Commissioner of Lands and as such herein representing the Government of the Transvaal of the one part hereinafter referred to as the Government and

MARTHINUS ANDREAS GOETZ

in his capacity as Mayor of the Municipality of Potchefstroom and as such duly authorised by the Town Council of the said Municipality by Resolution dated 10th July 1905 to enter into these presents of the second part hereinafter referred to as the said Council.

WITNESSETH :—

That the said Council has agreed to sell to the said Government who has agreed to purchase for the considerations aftermentioned all the right title and interest whatsoever of the said Municipality in and to certain piece of land at present known as the Mooibank Settlement and shown in red on the annexed plan together with an adjoining piece of land shown in blue on the annexed plan with the rights and on the conditions as in these presents set out :—

(1) The Government shall be entitled to take for use and enjoyment on the land hereby purchased and any other land which may come under its control in the neighbourhood a full one-third share of the water which the said Council is entitled to take from the Mooi River.

The share of water shall be taken at the bifurcation of the existing canals below the Mooi River railway bridge.

To permit of a satisfactory division being made the Government shall be entitled to construct and maintain regulators to apportion the supply automatically between the two canals and shall further construct and maintain an escape for the return to the river of any surplus water going down the joint canal during floods.

The Government shall be entitled to construct and maintain from the aforesaid point of bifurcation to termination the necessary canal or pipes to convey the water and shall for this purpose be entitled to the free use and enjoyment of a strip of land 30 feet wide on each side of the centre line of such canal or line of pipes.

The Government shall be entitled to fence in and enclose the land so reserved on each side of the canal or line of pipes and shall have full control thereover saving always the leaving of such crossings as may be necessary in the public interest.

The Government shall be entitled to maintain the joint canal and to construct such works as are necessary for its proper maintenance along its length and at its intake in order that normal supply may be maintained.

If and when certain proposed reservoir is made for the better distribution of the water the whole question of the division of the river supply shall be settled in accordance with the new conditions thereby created.

(2) Appurtenant to each original plot on the existing Mooibank Settlement (the plots being 62 in number) shall be the right to grazing on the open lands of the town commonage for 25 head of great stock and 100 head of small stock (goats or sheep).

(3) All expenses of survey transfer as also the expenses of this Deed of Sale and of all notarial contracts which may be required to be drawn and passed as a result of these presents shall be borne by the Government.

(4) In consideration of the premises aforesaid the Government agrees to pay to the said Council in cash upon registration and completion of the necessary documents of title the sum of twenty-one thousand pounds (£21,000) and further to transfer to the said Council certain two farms, viz.:—Hesse No. 80 and Nootivervacht No. 721 in the District of Potchefstroom together with all mineral rights thereon.

(5) Inasmuch as some of the terms and conditions of this contract or portions thereof are or may be deemed to be contrary or repugnant to existing laws and by reason thereof such terms and conditions or some of them or portions thereof cannot be performed it is expressly agreed between the parties that in case such legislation or legislative sanction in respect of this contract may be necessary cannot be obtained in its present form or with such modifications as may be assented to by both parties before the Thirtieth (30th) day of September next this contract shall become void.

Thus done and agreed at Potchefstroom on the Tenth day of July in the year of Our Lord One thousand Nine hundred and Five.

Signed at Pretoria by the Commissioner of Lands this Eleventh day of July 1905.

ADAM JAMESON,
Commissioner of Lands.

As Witnesses :

G. R. HUGHES.
A. E. CHARTER.

M. A. GOETZ,
*Mayor of the
Municipality of Potchefstroom.*

As Witnesses :

P. FERRERO.
J. J. HARTLEY.

No. 3 of 1905.] [Promulgated 8th September, 1905.]

*AN ORDINANCE

TO ESTABLISH COMMITTEES FOR DEALING WITH EPIDEMIC DISEASES AND TO MANAGE HOSPITALS.

(Assented to 2nd September, 1905.)

WHEREAS a body of persons known as the Rand Plague Committee was constituted and empowered under various Government Notices to carry out in the Witwatersrand District of the Colony certain Regulations made by the Colonial Secretary under section *fifty-eight* of the Municipal Corporations Ordinance 1903 under circumstances of urgent necessity arising from the existence of bubonic plague;

And whereas although the said disease of bubonic plague has ceased to exist it is advisable to continue the existence of such Committee;

And whereas it may be desirable to constitute similar Committees for a like purpose in other places;

And whereas it is desirable to create Committees for the management of Public Hospitals and to transfer to them the assets and liabilities of Hospital Committees which have ceased to exist;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

†‡1. (1) The Lieutenant-Governor may from time to time by Proclamation in the *Gazette* constitute in such manner as he shall think fit for any area a Committee for any or all of the following purposes:—

Power of Lieutenant-Governor to constitute committees to carry out epidemic regulations.

* See Ord. No. 7 of 1906.

† For constitution of Health Committees, see Procs. (Admn.) Nos. 11 of 1906, 92 of 1906, 89 of 1907, 85 of 1908, 100 of 1908, and 93 of 1909 (Pretoria Suburbs), 14 of 1908, 72 of 1909 (Alberton), 31 of 1908, 71 of 1909 (Elsburg), 16 of 1909 (Nigel), 98 of 1909 (Louis Trichardt), 40 of 1910 (Premier Mine).

‡ For regulations and rules Pretoria Suburbs Health Committee, see Govt. Notices Nos. 200 of 1907 (*Gazette*, 15/2/07), and 89 of 1909 (erratum, *Gazette*, 22/1/09), 1192 of 1908 (*Gazette*, 27/11/08) and 1218 of 1908 (erratum, *Gazette*, 4/12/08), 356 of 1909 (*Gazette*, 2/4/09), 833 of 1909 (*Gazette*, 23/7/09), 1073 of 1909 (*Gazette*, 10/9/09), 1223 of 1909 (*Gazette*, 22/10/09), 1344 of 1909 (*Gazette*, 3/12/09); Alberton Health Committee, see Govt. Notices Nos. 204 of 1908 (*Gazette*, 28/2/08), 207 of 1908 (*Gazette*, 28/2/08), 1082 of 1908 (*Gazette*, 23/10/08), 64 of 1909 (*Gazette*, 8/1/09); Elsburg Health Committee, see Govt. Notices Nos. 357 of 1908 (*Gazette*, 10/4/08), 382 of 1908 (*Gazette*, 16/4/08), 355 of 1909 (*Gazette*, 2/4/09); Nigel Health Committee, see Govt. Notices Nos. 404 of 1909 (*Gazette*, 16/4/09), 803 of 1909 (*Gazette*, 9/7/09); Louis Trichardt Health Committee, see Govt. Notice No. 42 of 1910 (*Gazette*, 14/1/10); Premier Mine Health Committee, see Govt. Notice No. 587 of 1910 (*Gazette*, 30/5/10).

§(a) For the carrying out of any Regulations made by the Lieutenant-Governor for the maintenance of the health of the inhabitants of the area for which such committee is appointed and for the making of charges in respect of any sanitary services rendered under such Regulations or for carrying out in such area any such Regulations as are mentioned in section fifty-eight of the *Municipal Corporations Ordinance 1903*;

(b) for establishing or maintaining hospitals for the treatment of infectious or contagious diseases.

(2) The names of the members of any such Committee shall be notified in the *Gazette* and in a newspaper circulating in the area for which it is constituted.

(3) Any such Committee shall in carrying out any such purpose aforesaid have in addition all the powers and duties conferred and imposed upon it by Regulations made under section *five*.

Supervision of
Raid Plague
Committee.

2. *Repealed by Ordinance No. 9, 1906, section four.*

Allocation of
expenditure.

3. Whenever any such Committee as aforesaid has been constituted having jurisdiction over the whole or any part of the area under the jurisdiction of any Municipality the expenditure incurred by such Committee in the exercise of the powers and duties conferred and imposed upon it shall be defrayed in the following manner; that is to say: not less than one-half of such expenditure shall be borne out of the public revenue of the Colony and not more than one-half of such expenditure shall be borne by such Municipality as aforesaid; provided that if there be more than one Municipality included wholly or partly within the area over which such Committee has jurisdiction each such Municipality shall contribute in proportion to be determined by Regulation made under section *five*.

Appointment
of committees
to manage
public
hospitals.

*†4. The Lieutenant-Governor may from time to time constitute Committees for carrying on and managing Public Hospitals. Any such Committee when constituted shall take over the liabilities and may hold any property belonging to any Board or Committee which may actually or legally have ceased to exist and apply the same subject to the terms of any bequest or donation for or in connection with any such hospital to the purposes of such hospital.

§ This paragraph (a) substituted by Ord. No. 7 of 1906, sec. 1; see also Act No. 2 of 1909, sec. 5.

* For constitution of Hospital Committees, see Procs. (Admn.) Nos. 58 of 1906, 112 of 1908 (Klerksdorp), 54 and 112 of 1908 (Pietersburg), 55 and 112 of 1908 (Barberton), 58 and 112 of 1908 (Lydenburg), 59 and 112 of 1908 (Pretoria), 60 and 112 of 1908 (Boksburg), 61 and 112 of 1908, and Government Notice No. 739 of 1908 (*Gazette*, 7/8/08), Johannesburg.

† As to Johannesburg Hospital Committee, see Ord. No. 9 of 1906, sec. 3.

- ‡5. The Lieutenant-Governor may from time to time make alter or repeal Regulations
- (a) for the appointment of officers of any such Committee; Power of Lieutenant-Governor to make regulations.
- (b) prescribing the manner in which any of the provisions of sections *one three* and *four* shall be carried out;
- (c) prescribing the manner of giving effect to any allocation of expenditure required under section *three*.
- Every such Regulation shall upon publication in the *Gazette* be of the same effect as if inserted in this Ordinance.
6. All actions or other legal proceedings brought by or against any such Committee shall be brought or defended in the name of the chairman thereof. Legal proceedings.
7. This Ordinance may be cited as the Epidemic Disease and Hospital Committees Ordinance 1905. Title.

‡ For regulations Pretoria Suburbs Health Committee, see Govt. Notices Nos. 132 of 1906 and 133 of 1906 (*Gazette*, 2/2/06), 248 of 1909 (*Gazette*, 26/2/09); Klerksdorp Hospital Committee, see Govt. Notices Nos. 990 and 991 of 1906 (*Gazette*, 5/10/06), 1080 of 1909 (*Gazette*, 17/9/09), 317 of 1910 (*Gazette*, 1/4/10); Alberton Health Committee, see Govt. Notices Nos. 205 and 206 of 1908 (*Gazette*, 28/2/08), 361 of 1908 (*Gazette*, 16/4/08); Elsburg Health Committee, see Govt. Notice No. 358 of 1908 (*Gazette*, 10/4/08); Nigel Health Committee, see Govt. Notices Nos. 405 of 1909 (*Gazette*, 16/4/09); 467 of 1909 (*Gazette*, 30/4/09); Pietersburg, Barberton, and Boksburg Hospital Committees, see Govt. Notices Nos. 576 of 1908 (*Gazette*, 26/6/08); 1080 of 1909 (*Gazette*, 17/9/09), 317 of 1910 (*Gazette*, 1/4/10); Pretoria Hospital Committee, see Govt. Notices Nos. 576 of 1908 (*Gazette*, 26/6/08); 634 of 1908 (*Gazette*, 10/7/08), 809 of 1909 (*Gazette*, 16/7/09), 1080 of 1909 (*Gazette*, 17/9/09), 317 of 1910 (*Gazette*, 1/4/10); Johannesburg Hospital Committee, see Govt. Notices Nos. 576 of 1908 (*Gazette*, 26/6/08); 723 of 1908 (*Gazette*, 31/7/08); 1022 of 1909 (*Gazette*, 3/9/09), 1080 of 1909 (*Gazette*, 17/9/09), 317 of 1910 (*Gazette*, 1/4/10); Lydenburg Hospital Committee, see Govt. Notices Nos. 615 of 1908 (*Gazette*, 3/7/08), 1080 of 1909 (*Gazette*, 17/9/09), 317 of 1910 (*Gazette*, 1/4/10).

Repealed by Act No. 1 of 1905

No. 4 of 1905.]

[Promulgated 15th September, 1905.]

AN ORDINANCE

TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE MANUFACTURE STORAGE SALE IMPORTATION AND EXPORTATION OF EXPLOSIVES.

Assented to 9th September, 1905.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. The laws mentioned in the Schedule to this Ordinance shall be and are hereby repealed to the extent set forth in the said Schedule.

2. In this Ordinance unless inconsistent with the context “authorized explosive” shall mean an explosive named in a list approved by the Lieutenant-Governor and published by notice in the *Gazette*;

“blasting materials” shall mean any explosive used for the purpose of blasting;

“danger building” shall mean any building or part thereof used as an explosives factory or explosives magazine or in connection therewith unless in respect of such building or part thereof a certificate has been granted under Regulations framed under this Ordinance;

“explosives magazine” shall mean any building licensed under this Ordinance for the storage of explosives;

“explosives factory” shall mean any site licensed under this Ordinance for the manufacture of any explosives together with every mound building and work for whatsoever purpose used;

“explosive” shall mean

(a) gunpowder nitro-glycerine dynamite gun-cotton blasting-powders fulminate of mercury or of other metals coloured fires and every other substance whether similar to those above mentioned or not

§ The following were declared authorized explosives by Govt. Notice No. 431 of 1906 (*Gazette*, 4/5/06):—(1) Manufactured in South Africa: (a) Nitro compounds (containing nitro-glycerine)—Blasting gelatine, gelignite of gelatine dynamite, dynamite No. 1 (Guhr dynamite), dynamite Nos. 2, 2a, 2t and coal, dynamite (Ligdyn) Nos. 1, 2, and 3, coal powders Nos. 1, 2, and 3; (b) Nitro compounds (not containing nitro-glycerine)—Maganite; (c) Chlorate mixtures—Eucalypt. (2) Imported from oversea: Any explosive, provided that it is included in and conforms to the “Authorized List” of Explosives in force in Great Britain, such as gunpowder, blasting and sporting powders, safety fuse, ammunition of various kinds (cartridges), detonators and percussion caps, collodion cotton, fireworks of various kinds, blasting cartridges of various kinds, and further provided that it arrives in good order and is packed and imported in accordance with the regulations framed under the Explosives Ordinance, 1905. “Megadyne” was declared an authorized explosive by Govt. Notice No. 254 of 1907 (*Gazette*, 1/3/07).

used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect;

(b) fuses rockets detonators cartridges ammunition of all descriptions and every adaptation or preparation of an explosive as above defined;

(c) any other substance which the Lieutenant-Governor may from time to time by Proclamation in the *Gazette* declare to be an explosive;

“inspector” shall mean any person appointed under section *three* of this Ordinance and any inspector appointed prior to the date of this Ordinance and acting in such capacity;

“manufacture” shall mean the making and division of an explosive from or into its component parts by any process the conversion of an explosive into an explosive of another kind and the alteration repair or fitting for use of any explosive;

“premises” shall mean any land or building or structure or part thereof or any tent railway truck cart van or other vehicle;

“unauthorized explosive” shall mean an explosive not named in a list of authorized explosives published as in this section mentioned.

3. It shall be lawful for the Lieutenant-Governor from time to time to appoint a chief inspector of explosives and so many inspectors and assistant inspectors of explosives as to him may seem necessary for carrying out the provisions of this Ordinance and any Regulations made thereunder. The chief inspector of explosives shall in carrying out his powers and duties be subject to the supervision and direction of the Government Mining Engineer.

Power of Lieutenant-Governor to appoint from time to time inspectors of explosives.

MANUFACTURE OF EXPLOSIVES.

4. (1) No person shall manufacture any unauthorized explosive unless

(a) such explosive be manufactured solely for purposes of chemical experiment and not for sale and in quantities not exceeding one pound in weight at any one time or five pounds in all;

(b) such explosive be manufactured solely for practical trial as an explosive and not for sale and in quantities not exceeding two hundred pounds in weight and with the approval of and subject to such conditions as may be in writing prescribed by an inspector.

(2) Any person who shall contravene the provisions of this section or any condition prescribed under the powers thereof shall be liable on conviction to a fine not exceeding one hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months and the explosive in respect of which such contravention shall have taken place shall be forfeited.

Prohibition of manufacture of unauthorized explosives except in small quantities for chemical experiment.

(3) The owner and the occupier of any premises in or on which an unauthorized explosive has been manufactured in contravention of this section shall be deemed to be the manufacturer unless he can satisfy the Court that he was unaware that any such contravention was occurring or had occurred.

(4) The burden of proving that any manufacture of an unauthorized explosive was solely for purposes of chemical experiment or practical trial and not for sale shall in any prosecution under this section be upon the accused.

Prohibition of manufacture of authorized explosives except in licensed factories.

5. No person shall manufacture any authorized explosive in any place other than an explosives factory.

Any person who shall contravene the provisions of this section shall be liable on conviction to a fine not exceeding one hundred pounds and in default of payment of the same to imprisonment with or without hard labour for a period not exceeding six months and the explosive in respect of which any such contravention shall have taken place shall be liable to be forfeited.

STORAGE OF EXPLOSIVES.

Prohibition of storage or possession of unauthorized explosives save in accordance with section four.

6. (1) No person shall keep store or be in possession of any unauthorized explosive

(a) unless the same shall have been manufactured as provided by paragraph (a) of sub-section (1) of section four and shall not exceed five pounds in weight; or

(b) unless the same shall have been manufactured as provided by paragraph (b) of sub-section (1) of section four and be kept stored or possessed in quantities not exceeding two hundred pounds in weight and in accordance with the conditions therein mentioned.

(2) The provisions of sub-sections (2) (3) and (4) of the said section four shall apply *mutatis mutandis* in the event of any contravention of this section or of any conditions prescribed thereunder.

Prohibition of storage of authorized explosives except on licensed premises.

7. (1) No person shall keep store or be in possession of any authorized explosive in or on any premises

(a) except in an explosives factory or explosives magazine;

(b) unless such explosive be kept for private use and not for sale or other disposal and under a permit issued in accordance with regulations made under this Ordinance;

(c) unless such explosive be kept for use in the construction of any railway road or other public work in quantity not exceeding five thousand pounds in weight and be stored in a temporary magazine approved by an inspector and under conditions prescribed in writing by an inspector;

(d) unless such explosive be kept in quantities not exceeding one thousand pounds in weight and be stored in an isolated place approved by an inspector and under conditions prescribed in writing by an inspector.

(e) unless such explosive be kept by a person licensed as provided in section *eight* to deal in explosives and in accordance with any conditions attached to such licence.

(2) Any person who shall contravene the provisions of this section or any condition prescribed thereunder or mentioned therein shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months and the explosive in respect of which such contravention shall have taken place shall be liable to be forfeited.

(3) The owner and the occupier of any premises in or on which any contravention of this section has occurred shall be liable to the penalties prescribed for any such contravention unless he shall satisfy the Court that he was unaware that any such contravention was occurring or had occurred.

LICENSED DEALERS IN EXPLOSIVES.

8. No person other than the manufacturer shall sell deal in or dispose of any explosive unless he shall be in possession of a licence granted under the Regulations framed under this Ordinance.

Licence necessary to deal in explosives.

IMPORTATION EXPORTATION CONVEYANCE AND USE OF EXPLOSIVES.

9. No person shall import into or export from the Colony or cause to be imported therein or exported therefrom any explosive unless he shall have obtained a permit issued under the authority of an inspector.

No importation or exportation of explosives without permit.

10. No person shall use or cause to be used blasting materials unless he shall be in possession of a permit issued under the authority of an inspector or of the Resident Magistrate in any district other than the Witwatersrand District or unless he shall be under the immediate supervision of a person who has such permit and no such permit shall be issued unless the inspector or Resident Magistrate as the case may be is satisfied that the applicant may be entrusted with the use of blasting materials and that there is necessity for his using the same.

Prohibition of use of blasting materials without permit.

11. Any person who shall contravene any provision of sections *eight nine* or *ten* shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment of the same to imprisonment with or without hard labour for a period not exceeding three months.

Penalties.

LICENSING OF FACTORIES AND EXPLOSIVE MAGAZINES.

12. The owner or occupier of any factory erected or established at the date of the taking effect of this Ordinance and used for the manufacture of explosives shall apply to the Commissioner of Mines for a licence under this Ordinance and it shall be the duty of the Commissioner of Mines to grant such application in respect of any such factory and to issue to the applicant a licence as hereinafter provided

Owners and occupiers of existing factories entitled to a licence.

without payment of any fee therefor; provided that no such licence shall be issued unless such factory is carried on in accordance with the provisions of this Ordinance or any Regulations made thereunder; and provided further that notwithstanding anything in this Ordinance or such Regulations the owner or occupier of such factory shall not be required to remove or alter existing danger buildings.

Particulars
to be stated
in applica-
tions.

13. Every person who desires to erect or establish any factory for the manufacture of explosives shall make application to the Commissioner of Mines accompanied by diagrams or plans of the proposed factory setting forth and specifying

(a) the situation and extent of area of the land on which it is proposed to erect such factory together with the area of land surrounding the same proposed to be left free of buildings;

(b) the several distances which it is proposed to maintain between the several danger buildings respectively and between such danger buildings and other buildings or works used in connection with such factory;

(c) the materials to be used and the mode of construction of all danger buildings and works on in or used in connection with such factory;

(d) the nature of the processes of manufacture to be used in any such factory the place at which each process of manufacture and every description of work is intended to be carried on in such factory and the places on or in which any ingredients of explosives or other articles liable to spontaneous ignition or combustion or otherwise dangerous are proposed to be kept or stored;

(e) the quantity of explosives or of any wholly or partly mixed ingredients thereof which are to be simultaneously used in or near any building or in or near any machine;

(f) the maximum number of persons which it is proposed to employ in each danger building in such factory and whether such persons employed are white or coloured;

(g) any further particulars which the Commissioner of Mines may require having regard to any special circumstances arising from the locality or construction of any buildings or works or to the nature of any process to be carried on therein.

Applications
for licence to
be considered
by
Lieutenant-
Governor.
Notice of
enquiry into
expediency
of granting
licence and
objections to
such grant.

14. Every such application for a licence shall be submitted by the Commissioner of Mines to the Lieutenant-Governor who may refuse such application or direct that a public inquiry be held as in the next succeeding section is provided as to the expediency of granting such application.

15. (1) In the event of any direction to hold any such enquiry as aforesaid the Commissioner of Mines shall cause a notice to be published stating that application has been made under this Ordinance for the grant of a licence to erect a factory for the manufacture of explosives and describing as far as possible the proposed site of such factory and stating that a commission will sit to hear any objections to the grant of such licence and the date time and place at which such commission will hear the application.

(2) Such notice shall be published once during four consecutive weeks in the *Gazette* and in one or more newspapers circulating in the district in which it is proposed to erect or establish such factory.

(3) The Town Council of any Municipality in which or within one mile of which is situate the site of such proposed factory and any person residing or carrying on business within a like distance may either individually or jointly with others lodge an objection in writing to the grant of any such licence with the chairman of the commission not later than seven days prior to the sitting of the commission.

(4) Every applicant for a licence or objector thereto may appear before the commission in support of his application or objection either in person or by an advocate or attorney of the Supreme Court or by a law agent admitted to practise in a Court of Resident Magistrate or in case the objector be the Council of a Municipality it may appear by the town clerk or any person authorized by resolution of the Council.

16. The commission shall consist of the Resident Magistrate of the district in which it is proposed to erect such factory (who shall be the chairman of the commission) an inspector and one other person appointed for the purpose by the Lieutenant-Governor and such commission shall as soon as may be after the conclusion of its sitting make a report to the Lieutenant-Governor with such recommendations as it may think fit.

Constitution powers and duties of the commission.

17. Upon consideration of the report and recommendations of such commission the Lieutenant-Governor may refuse the application for a licence or grant such application with or without modifications and conditions.

Powers of Lieutenant-Governor to grant or refuse licence on consideration of the report of the commission.

18. Any licence under this Ordinance to erect establish and maintain a factory for the manufacture of explosives shall be issued by the Commissioner of Mines upon payment of a sum of fifty pounds together with five pounds for every magazine to be used in connection with such factory; provided that no such licence shall be issued until the Commissioner of Mines is satisfied upon the report of an inspector that the premises in respect of which it has been granted are in a sufficiently complete state to enable the provisions of this Ordinance and any Regulations made thereunder to be carried out.

Issue of licence by Commissioner of Mines.

19. Any licence aforesaid or the conditions thereof may upon application be amended by the Commissioner of Mines who shall not grant such amendment except upon a report by an inspector that the safety of the public or of the persons employed in or at the licensed factory will not be thereby diminished; provided that no such amendment shall be inconsistent with the provisions of this Ordinance or any Regulations made thereunder. A fee of one pound shall be payable on every occasion that a licence is amended under this section.

Amendment of licence by Commissioner of Mines.

Transfer of licences by Commissioner of Mines.

20. Any such licence aforesaid may be transferred into the name of another; provided that four weeks' notice in writing of the proposed transfer be sent to the Commissioner of Mines who shall not refuse such transfer except upon the ground that the proposed transferee is not a suitable person to hold such licence. An appeal shall lie to the Lieutenant-Governor against any refusal to permit transfer of a licence under this section and the decision of the Lieutenant-Governor on such appeal shall be final and conclusive.

Revocation of licence by Lieutenant-Governor and lapse of same.

21. It shall be lawful for the Lieutenant-Governor to revoke any such licence aforesaid and every such licence shall *ipso facto* lapse and become void if the holder thereof shall have ceased to carry on any work authorized by such licence for a period of two years or if the premises in respect of which such licence was granted have been used for any trade or work not authorized by the licence.

Penalties for contravention of conditions of licence.

22. Any person who shall contravene or neglect to comply with any of the conditions upon which any such licence aforesaid was granted shall be liable on conviction to a fine not exceeding two hundred and fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding twelve months.

Permission to erect or use explosives magazines.

23. (1) Any person desiring to erect or carry on a magazine for the storage of explosives shall make application for a licence for the same to the Commissioner of Mines who may grant such licence subject to the observance of the Regulations made under this Ordinance and upon the condition that no greater quantity of explosives than fifty tons is at any time stored in such magazine; and upon such other conditions as the Commissioner of Mines may think fit to attach to such licence. Any person who shall contravene any condition of a licence granted under this section shall be liable on conviction to the penalties provided by the last preceding section.

(2) The provisions of sections *twenty* and *twenty-one* shall *mutatis mutandis* apply in respect of any licence granted under this section.

(3) A fee of five pounds shall be payable for any licence granted under this section.

POWERS OF GOVERNMENT MINING ENGINEER AND INSPECTOR.

Powers of inspector to enter and inspect factories and other premises where explosives stored or suspected of being stored.

24. It shall be lawful for the Government Mining Engineer and any inspector

(a) to enter any explosives factory or explosives magazine at any hour of the day or night for the purpose of inspecting the same and of making enquiries relative to the compliance with the provisions of this Ordinance and the Regulations made thereunder or relative to the means used therein for preserving the safety of the public or of any person employed therein;

(b) to enter at any hour of the day or night upon any premises in which explosives are kept or in which there shall be good reason to suspect that explosives are being

manufactured or stored or kept or conveyed in contravention of the provisions of this Ordinance and to inspect such premises and make all such enquiries thereon as he may think fit;

(c) to require the occupier or other person for the time being in charge of any explosives factory explosives magazine or such other premises as are in this section mentioned to furnish for purposes of analysis or test samples of explosives or ingredients of explosives or any substance found therein or suspected of being an explosive or an ingredient of an explosive;

provided that no such powers as are conferred by this section shall be so exercised as to unnecessarily hinder the work carried on in such factory magazine or premises aforesaid.

25. Any person who shall wilfully obstruct or hinder the Government Mining Engineer or any inspector in the exercise of the powers conferred by this Ordinance or shall disobey any lawful order of such officer or who upon demand refuses to answer as far as he may be able any enquiry by such officer or who shall give false information to such officers whether in answer to any such enquiry or not shall be liable upon conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Penalties for obstructing inspector or refusing to answer enquiries etc.

26. If upon any such inspection aforesaid an inspector shall discover that any method of work packing or storage is being used which is in conflict with the provisions of this Ordinance or of any regulations made thereunder or which in his opinion is calculated to endanger the safety of the public or of any person employed in the premises inspected he may require the immediate discontinuance of such method; provided that any person who is dissatisfied with a decision that a method is calculated to endanger safety may within fourteen days thereof lodge an appeal in writing through the Chief Inspector of Explosives to the Government Mining Engineer against any order of discontinuance; and such appeal shall be heard and determined by the Government Mining Engineer unless the appellant shall request that his appeal be heard by a special commission constituted as in the next succeeding section is provided.

Power of inspector to order discontinuance of dangerous methods subject to appeal to Government Mining Engineer or commission.

27. (1) Any such special commission shall consist of five members one of whom shall be the Government Mining Engineer two persons nominated by him and two persons by the appellant. The Government Mining Engineer shall be the chairman of such commission.

Constitution of commission.

(2) If the appeal shall be dismissed the commission may order the costs or any portion thereof to be paid by the appellant.

(3) No such appeal shall be heard by the commission unless a sum of fifty pounds be deposited by the appellant with the Government Mining Engineer as security for the costs aforesaid.

(4) If such appeal is allowed such deposit shall be returned to the appellant and if such appeal is dismissed such portion of it shall be retained by the Government Mining Engineer as is necessary to cover the costs payable by the appellant under this section.

28. The decision of the Government Mining Engineer (if no request be made for a hearing before a commission) and the decision of such special commission shall be final and conclusive.

Decision of Government Mining Engineer or commission as case may be to be final.

Power of Lieutenant-Governor to make regulations.

MISCELLANEOUS.

*29. The Lieutenant-Governor may from time to time make alter or repeal regulations as to all or any of the following matters:—

- (a) the construction of explosives factories explosives magazines and other danger buildings;
- (b) the conditions under which the manufacture of explosives may be carried on;
- (c) the storage of explosives whether in explosives magazines or elsewhere;
- (d) the use of explosives;
- (e) the packing transport importation and exportation of explosives;
- (f) the issue of licences to dealers in explosives and the conditions of such licences;
- (g) the enquiry into the circumstances of accidents caused by explosives and for the giving of notice of such accidents;
- (h) the prevention of trespassing in or upon any explosives factory;
- (i) generally for the protection of life and property and for the better carrying out of the objects and purposes of this Ordinance;

and any such Regulations may provide penalties for the breach thereof not exceeding in any case a fine of one hundred and fifty pounds or in default of payment of the same imprisonment with or without hard labour for a period not exceeding twelve months.

Any regulations in force at the date of the taking effect of this Ordinance and made under any of the laws hereby repealed shall remain in force until altered or repealed by regulations made under this section.

30. Courts of Resident Magistrate shall have special jurisdiction to try offences against this Ordinance and any regulations made thereunder and impose the maximum penalties provided for such offences.

Special jurisdiction of Resident Magistrates to try offences under this Ordinance.

31. The Commissions Powers Ordinance 1902 shall apply *mutatis mutandis* to any person or body of persons sitting as

Application of Commissions Powers Ordinance 1902 to enquiries etc.

* For regulations see Govt. Notices Nos. 121 of 1906 (*Gazette*, 2/2/06 and 9/2/06), 221 of 1906 (*Gazette*, 2/3/06), 454 of 1906 (*Gazette*, 11/5/06), 1001 of 1908 (*Gazette*, 2/10/08), 674 of 1909 (*Gazette*, 18/6/09), 144 of 1910 (*Gazette*, 11/2/10), 298 of 1910 (*Gazette*, 24/3/10).

a commission or holding any enquiry under this Ordinance or any regulations made thereunder.

32. Nothing in this Ordinance contained shall apply

Saving clause.

(a) to the importation storage use or transport of any explosive by His Majesty's Regular Forces or by any Volunteer Force or Police Force constituted under any law;

(b) to the storage or use of explosives at any "mine" or "works" as defined by the Mines Works and Machinery Regulations Ordinance 1903 or any amendment thereof;

(c) to the possession or conveyance of any explosives taken as samples for the purpose of this Ordinance by an inspector or other person authorized by the Government Mining Engineer; provided that the quantity is not more than is reasonably necessary for the performance of such duty and such sample be kept and conveyed with all due precaution.

33. Nothing in this Ordinance contained shall be taken in any way to add to or amend the provisions of the Arms and Ammunition Ordinance 1902 or any amendment thereof.

Saving Arms and Ammunition Ordinance 1902.

34. This Ordinance may be cited for all purposes as the Explosives Ordinance 1905 and shall come into operation on the first day of January 1906.

Title and date of taking effect.

SCHEDULE.

Laws Repealed.	Extent of Repeal.
Law No. 10 of 1883	The whole.
Law No. 27 of 1896	The whole except sections <i>eighty-three</i> and <i>eighty-four</i> .
Ordinance No. 4 of 1903	The whole.
Ordinance No. 59 of 1903	Sections <i>two</i> and <i>three</i> .

No. 5 of 1905.]

[Promulgated 15th September, 1905.]

AN ORDINANCE

TO AMEND THE LAW RELATING TO INSOLVENCY IN CERTAIN
RESPECTS.

Assented to 9th September, 1905.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. Article *one hundred and forty-nine* of Law No. 13 of 1895 shall be and is hereby repealed.

Repeal of
article *one
hundred and
forty-nine*
of Law No. 13
of 1895.

2. It shall be lawful for the Lieutenant-Governor to direct that all or any of the duties imposed upon or the powers or functions exercised by the Master of the Supreme Court under or by virtue of the laws relating to insolvency and the administration of insolvent estates and the liquidation of companies shall be performed or exercised by an Insolvency Commissioner or such other officer as may be appointed for the purpose and such Commissioner or other officer shall during his tenure of office be in all respects in the same position as if his name were substituted for that of the said Master wherever the said Master is mentioned in any of the said laws.

Power of
Lieutenant-
Governor to
appoint
Insolvency
Commis-
sioner.

3. Law No. 5 of 1881 together with article *eighteen* of Law No. 1 of 1894† shall be and is hereby repealed and there shall be substituted therefor the following provisions:—

Repeal of
Law No. 5
of 1881 and
substitution
of new tariff
of fees
chargeable
by Master in
insolvency
and
liquidation
matters.

“(1) The Master of the Supreme Court shall and is hereby authorized and required to charge demand receive retain and recover in respect of acts matters and things done or caused to be done by him in his office all such fees as are specified in the Schedule hereto; such fees shall be collected by revenue stamps save and except that the fees of one quarter per cent. mentioned in the said Schedule may be paid to the Master in cash or otherwise as he may direct.”

“(2) Nothing in this section shall apply to any insolvent estate placed under sequestration or to a company placed in liquidation before the passing of this Ordinance.”

4. This Ordinance may be cited for all purposes as the Insolvency Law Amendment Ordinance, 1905.

Title.

† Law No. 1 of 1894 is repealed by Act No. 31 of 1909, sec. 1.

SCHEDULE.*

	£	s.	d.
For every order of Court filed in the Estate of any insolvent or company in liquidation		5	0
For attending any meeting of creditors before Master or Magistrate		10	0
For any notice published in the <i>Gazette</i> by the Master including cost of publication	1	10	0
For any notice of a third meeting appointed by the Master and convened by the trustee not including cost of publication.. ..		10	0
For every certificate of appointment of trustee or liquidator.. ..		10	0
For every certificate of appointment of provisional trustee or provisional liquidator		5	0
For every bond of security filed		5	0
For every certificate under the Master's hand		5	0
For each attendance in matters referred by the Court.. .. .	1	0	0
For every report at the discretion of the Master subject to taxation by the Court or a Judge thereof not less than		10	0
For inspection of any document each estate		2	6
For copy of any document of one hundred words or less		5	0
For every additional one hundred words or portion thereof		2	6
For binding documents in each estate or company according to the size of the estate in the discretion of the Master .. from 10s. 6d. to	1	10	6
For taxing trustees' or liquidators' remuneration or bills of costs on every one pound or fraction of a pound of the taxed amount..		1	0
For registering accounts of curators trustees or liquidators each ..		5	0
On the net assets of any insolvent estate or any company in liquidation whether distributed by trustee or liquidator or abandoned for realization by secured creditors in terms of section <i>sixty-two</i> of Law No. 13 of 1895; to be paid out of the free residue of the estate or by contribution among the creditors who shall have proved in terms of section <i>one hundred and thirteen</i> of the said law			<i>one quarter per cent.</i>

* See, however, Act No. 15 of 1909, Fourth Schedule.

No. 6 of 1905.]

[Promulgated 15th September, 1905.]

*AN ORDINANCE

TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE
PRESERVATION OF GAME.

(Assented to 9th September, 1905.)

WHEREAS it is expedient to consolidate and amend the law of this Colony relating to the preservation of game.

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Repeal of laws.

1. The Game Preservation Ordinance 1902 and the Game Preservation Amendment Ordinance 1903 shall be and are hereby repealed.

Interpretation of terms.

2. In this Ordinance and any regulations made thereunder unless inconsistent with the context:

“game” shall mean all birds and animals named in the Schedule hereto or in such Schedule as amended by Proclamation under section *three*;

“big game” shall mean the birds and animals mentioned in the Part II of the Schedule to this Ordinance or in such part of the Schedule as amended by Proclamation under section *three*;

“occupier” shall mean any person who is the owner of land or the lessee of land under an agreement in writing with the owner thereof or who has the right of shooting over land under an agreement in writing with the owner thereof;

“hunt” shall mean shooting at pursuing taking killing or wilfully disturbing;

“sell” shall mean selling hawking offering or exposing for sale;

†“police officer” shall mean an officer constable or trooper of any police force established in this Colony by any law and in addition shall include any person appointed a warden or ranger of a reserve under regulations mentioned in section *four*;

“close season” shall mean the period from time to time fixed by Proclamation under section *three* within which it shall not be lawful to hunt game save as in this Ordinance provided;

“open season” shall mean any period which is not close season;

* See Acts Nos. 13 of 1907, 30 of 1907, 11 of 1909.

† As to powers of field cornet see Act No. 34 of 1907, sec. 6 (4); and of wardens and rangers see Act No. 11 of 1909, sec. 8.

“magistrate” shall mean a resident magistrate assistant resident magistrate native commissioner and resident justice of the peace; the term “resident magistrate” shall mean that officer only;

“court” shall mean the court of a magistrate as in this section defined;

“owner” shall in the case of private land mean the registered owner thereof and in the case of town lands or municipal lands the town clerk of the municipality and in the case of Crown land the Commissioner of Lands or any person appointed by him to exercise powers conferred upon an owner or occupier by this Ordinance;

“biltong” shall mean the flesh of game dried for purposes of preservation.*

3.† *The Governor may from time to time by proclamation in the Gazette*

(a) *add to or withdraw from either part of the Schedule to this Ordinance the names of any bird or animal in respect of the whole Colony or any district or any portion of a district thereof;*

‡(b) *prescribe, fix, and alter for this Colony or for any district or portion of a district thereof, the period of the close season within which it shall not be lawful (save as in this Ordinance or any amendment thereof is excepted) to hunt any species of game or one or other sex of any species of game; or declare that there shall be no close season for any species of game or for one or other sex of any species of game throughout the whole Colony or throughout any district or any portion of a district thereof;*

§(c) *prescribe a list of game which shall be protected in this Colony or in any district or any portion of a district thereof for a specified period (not exceeding three years) and add to or otherwise vary that list;*

(d) *impose a limit in respect of any district or portion of a district of this Colony upon the number of any species or of one or other sex of any species of game which may be hunted under any game licence in any district or portion of a district in this Colony;*

¶(e) *define reserves within which it shall not be lawful to hunt game without the special permission in writing of the Colonial Secretary;*

|| (f) *prescribe a list of birds and animals (other than those mentioned in the Schedule to this Ordinance) which on account of their general utility or for other reasons shall*

Power of Lieutenant-Governor by Proclamation in Gazette to fix close seasons list of protected game define reserves and amend schedule.

* Words in italics have been added by Act No. 13 of 1907, sec. 1.

† This sec. 3 substituted by Act No. 11 of 1909, sec. 1.

‡ For close season see Proc. (Admn.) No. 16 of 1910.

§ For list of protected game see Proc. (Admn.) No. 17 of 1910.

¶ For game reserves see Procs. (Admn.) Nos. 31 of 1906 (Pretoria, Piet Retief—Pongola Reserve, Zoutpansberg—Singwitsi Reserve), 20 of 1909 (Lydenburg—Sabi Reserve), 96 of 1909 (Rustenburg).

|| For list of protected birds see Proc. (Admn.) No. 14 of 1910.

be protected from time to time and for such periods as may be deemed necessary, throughout this Colony or any district or portion of a district thereof.

Power of
Lieutenant-
Governor to
make
regulations.

*4. (1) The Lieutenant-Governor may from time to time make alter and repeal regulations not inconsistent with the provisions of this Ordinance for all or any of the following matters :

- (a) prohibiting or regulating the capture or destruction of game by means of nets springes gins traps snares or other contrivances and regulating the coursing of game with dogs;
- (b) regulating the taking disturbance destruction purchase or sale of the eggs of game and the young of game;
- (c) regulating the export from the Colony of game or the horns tusks skins or hides of game;
- (d) regulating the destruction of vermin and the payment of rewards for such destruction and declaring from time to time what birds and animals shall be deemed vermin for the purposes of such regulations;
- (e) for the protection and preservation of game within any reserve established by Proclamation under section *three* and for the appointment of wardens and rangers of such reserve and the regulation of traffic through such reserve;
- (f)† regulating the taking of the young of ostriches and ostriches eggs and generally for encouraging the industry of ostrich farming;
- (g) regulating the hunting of game for scientific purposes;
- (h) fixing and altering the fees to be paid for any licence or permit issued under this Ordinance;
- (i) regulating the manner of issue of licences and permits and prescribing the forms of such licences and permits;
- (j) *regulating the sale of game or biltong;*||
- (k) *regulating the importation into this Colony of game or the horns, tusks, skins, or hides of game.*†

Any such regulation shall upon publication thereof in the *Gazette* be of the same force and effect as if it were contained in this Ordinance.

(2) The Lieutenant-Governor may prescribe in any such regulations penalties for a contravention thereof not exceeding a fine of fifty pounds.

Prohibition
of hunting or
sale of game
during close
season save
as in this
Ordinance
excepted.

5. (1) No person shall save as is excepted in this Ordinance or any regulations made thereunder hunt game during the close season.

(2) No person shall save as in this Ordinance excepted sell game dead or alive during the close season unless the same shall have been lawfully taken during the open season or shall have been imported from over sea *or from some neighbouring Colony.* §

* For regulations see Govt. Notice No. 212 of 1910 (*Gazette*, 4/3/10).

† As amended by Act No. 30 of 1907, sec. 1.

|| Paragraph (j) added by Act No. 13 of 1907, sec. 3.

† Paragraph (h) added by Act No. 11 of 1909, sec. 2.

§ Words in italics added by Act No. 11 of 1909, sec. 3.

(3) Any person contravening any provision of this section shall be liable on conviction to a fine not exceeding fifty pounds.

6.|| (1) No person shall hunt any bird or animal protected by a Proclamation issued under paragraphs (c) and (f) of section *three*.

Prohibition of and penalties for hunting game protected by Proclamation or in reserves.

(2) No person shall hunt game in any reserve defined by Proclamation under paragraph (e) of section *three* without the permission of the Colonial Secretary.

(3) Any person contravening any provision of this section shall be liable on conviction to a fine not exceeding two hundred pounds.

7. (1) No person shall save as is excepted in this Ordinance or any regulations made thereunder hunt or sell game unless he is duly licensed in accordance with the provisions of the next succeeding section.

Prohibition of and penalties for hunting or selling game without the necessary licence or contravening conditions of licence.

(2) The following penalties shall be imposed upon any person convicted of a contravention of this section;

(a) for hunting game (other than big game) without a game licence or for contravening any condition of such licence a fine not exceeding twenty-five pounds;

(b) for hunting big game without a big game licence or for contravening any condition of such licence a fine not exceeding one hundred pounds;

(c) for selling game without a sale licence or for contravening any condition of such licence a fine not exceeding fifty pounds;

**(d) for shooting in any district or portion of a district a larger number of any species or of one or other sex of any species of game than the limit imposed by Proclamation issued under paragraph (d) of section three, a fine not exceeding one hundred pounds.*

8. Licences may be granted under this Ordinance of the following descriptions;

Classes of licences which may be issued under this Ordinance

(a) a "game licence" which shall be issued by any receiver of revenue for a period not longer than one year or for not less than one month and which shall entitle the holder thereof to hunt game (other than big game) during the period of the licence;

(b) a "big game licence" which may be issued by the Colonial Secretary to such persons as he may think fit and which shall entitle the holder thereof to hunt such big game and in such numbers as may be mentioned in the licence and on such conditions as may be endorsed thereon;

(c) † a "sale licence" which shall be issued by any receiver of revenue to any licensed butcher or market master and which shall entitle the holder thereof to sell game or biltong subject to the conditions prescribed by the regulations made under sub-section (1) (j) of section four; provided that no such licence shall authorize the

|| As amended by Act No. 11 of 1909, sec. 9 (1).

* Sub-sec. (d) added by Act No. 11 of 1909, sec. 4.

† Sub-sec. (c) substituted by No. Act 13 of 1907, sec. 4.

holder thereof to sell game or biltong in more than one shop store or market which shop store or market shall be named in such licence.

Conditions of
licence.

9. The following conditions shall be applicable to and endorsed upon every licence issued in accordance with the provisions of section *eight*:—

(a) it shall not be transferable by the person to whom it is issued;

(b) it shall be produced upon the demand of any police officer;

(c) it shall be liable to be cancelled by the Court on conviction for a contravention by the holder of any provision of this Ordinance or of any Regulations made thereunder;

(d) it shall be valid for the period for which it was issued and no longer;

(e) any condition authorized by section *eight* for any particular class of licence.

Rights of
owner to hunt
game upon
his own land
under certain
conditions.

10. Notwithstanding anything in this Ordinance contained it shall be lawful

* (a) for the owner or lessee of land (not being a native resident upon Crown land or in a location or native reserve or upon land used as a mission station) to hunt without a game licence, game upon that land except big game and game which may not be hunted under a game licence in the district or portion of a district in which the land is situated and, subject to the regulations made under sub-section (1) paragraph (j) of section four, to sell without a licence such game or biltong made from such game;

(b) for the owner occupier or cultivator of land to destroy game thereon which is causing damage to trees plants or standing crops;

(c) for the person authorized to hunt game for scientific purposes under Regulations mentioned in section four to hunt such game as may be named in the permit issued to him;

†(d) for any owner or occupier of a farm, on which game has been confined by fencing, who has first obtained a permit in writing from the Colonial Secretary, to hunt, subject to the conditions and during the period specified in that permit, buck mentioned therein for his own use, and whether or not such buck be specially protected by Proclamation issued under paragraph (c) of section three of this Ordinance; provided that the occupier of that farm shall not be entitled to shoot such buck without the permission in writing of the owner of the farm. Any person who contravenes or fails to comply with any condition attached to a permit issued by the Colonial Secretary under this paragraph shall be liable on conviction to a fine not exceeding fifty pounds.

* Sub-sec. (a) was substituted by Act No. 11 of 1909, sec. 5.

† Sub-sec. (d) added by Act No. 11 of 1909, sec. 6.

11. (1) No person shall at any time and whether he is the holder of a licence under this Ordinance or not be upon any land in pursuit of or in search of game unless he is the occupier thereof or has the permission in writing of the occupier or if the land be unoccupied of the owner or if the shooting rights have been leased to some person other than the occupier of the lessee of such rights.

Prohibition of trespass in pursuit of game.

Any person acting in contravention of the provisions of this sub-section shall be liable on conviction to a penalty not exceeding fifty pounds in the case of enclosed land or twenty-five pounds in the case of unenclosed land.

(2) If any person be found at any time on land in pursuit of or in search of game he may be required by the occupier of such land or by any servant or other person authorized thereto by such occupier or if such land be Crown Land by a Magistrate Justice of the Peace or police officer to state his true name and place of abode and forthwith to quit such land and if he shall fail to comply immediately with any such requirement he shall be guilty of an offence.

(3) Any dog found unaccompanied by its owner or other person having control over the same in pursuit of game upon land may be destroyed forthwith by or on the order of the occupier of such land.

12. The Commissioner of Lands may in his discretion grant permission in writing to any person subject to any Regulations made under paragraph (f) sub-section (1) of section *four* to capture the young of wild ostriches upon Crown Land or to take the eggs of ostriches and the owner or lessee of any private land may in relation to such land exercise the same powers subject to the Regulations aforesaid.

Taking of young of wild ostriches and ostrich eggs.

13. *Repealed by Act 30, 1907, section one.*

Export duty on ostriches and ostrich eggs.

14. Nothing in sub-section (9) of section *forty-two* of the Municipal Corporations Ordinance 1903 contained shall be taken as empowering the Council of a Municipality to make Regulations inconsistent with the provisions of this Ordinance or any Regulations made thereunder but such sub-section shall so far as it relates to game be deemed to confer upon such Council in relation to lands under its control such rights as are conferred by this Ordinance upon an owner occupier lessee or cultivator of land and power to make Regulations for that purpose.

Interpretation of sub-section (9) of section *forty-two* of Ordinance No. 58 of 1903 in so far as it relates to game.

15. (1) The possession of the carcasses meat skins hides horns or tusks of freshly killed game shall be prima facie evidence against a person accused of contravening this Ordinance or any Regulation made thereunder that he has hunted such game.

Evidence.

(2) Any person charged with doing any act for which by this Ordinance a licence or permission is required shall be deemed to be without such licence or permission unless he shall produce the same to the Court or give other satisfactory proof of possessing the same.

(3) The burden of proving any fact which would be a defence to a charge of contravening this Ordinance or any Regulation made thereunder shall lie upon the person charged.

Penalties when not expressly provided for contravention of Ordinance.

16. Any person contravening any provision of this Ordinance for the contravention of which no penalty is expressly provided shall be liable on conviction to a fine not exceeding five pounds and for any second or subsequent offence to a fine not exceeding twenty pounds.

Periods of imprisonment in default of payment of penalties.

* 17. *Whenever any fine shall have been imposed under the provisions of this Ordinance or any regulations made thereunder and the person convicted shall not forthwith pay the same the Court may order that such person be imprisoned with or without hard labour for a period*

(a) *not exceeding one month if the fine imposed does not exceed five pounds;*

(b) *not exceeding two months if the fine imposed does not exceed ten pounds;*

(c) *not exceeding four months if the fine imposed does not exceed twenty pounds;*

(d) *not exceeding six months if the fine imposed does not exceed twenty-five pounds;*

(e) *not exceeding nine months if the fine imposed does not exceed fifty pounds;*

(f) *not exceeding twelve months if the fine imposed does not exceed one hundred pounds;*

(g) *not exceeding eighteen months if the fine imposed be above one hundred pounds;*

unless such fine be sooner paid.

Forfeiture of skins and of licence.

18. The Court may order that any game or *biltong*† or any skin hide horns tusks or carcase of game found in possession of any person convicted of a contravention of this Ordinance or any Regulations made thereunder may be seized and forfeited and may cancel any licence or permit granted to any such person under this Ordinance.

Application of penalties.

19. All fines and the value of all forfeitures imposed for contravening this Ordinance or any Regulation made thereunder shall be paid into the public revenues of the Colony; provided that the Court may order that a sum not exceeding one half of any fine imposed be paid to any person by whose information a conviction shall have been obtained for such contravention aforesaid

Special jurisdiction of Courts to impose maximum penalties: reviews by and appeals to Supreme Court.

20. The Court shall have special jurisdiction to impose the maximum penalties provided for a contravention of this Ordinance or Regulations made thereunder; provided that convictions and sentences imposed by such Court shall be subject to review by and appeal to the Supreme Court in the same manner and under the same conditions as are convictions and sentences of Courts of Resident Magistrate under the Magistrates Court Proclamation 1902 or any amendment thereof and the provisions of sections *thirty-nine*

* This sec. 17 substituted by Act No. 11 of 1909, sec. 7.

† Words in italics have been inserted by Act No. 13 of 1907, sec. 6.

to *forty-three* inclusive of the said Proclamation as amended from time to time by any law shall apply in the case of any such review or appeal.

21. Notwithstanding anything in the Arms and Ammunition Ordinance 1902 contained it shall be lawful for any warden or ranger of a reserve established under section *three* of this Ordinance to be in possession of arms and ammunition while acting in the discharge of his duty under the Regulations made under this Ordinance without having a licence to possess such arms and ammunition.

22. This Ordinance may be cited for all purposes as the Game Preservation Ordinance 1905 and shall come into operation on a day to be hereafter fixed by Proclamation of the Lieutenant-Governor in the *Gazette*.*

Amendment
of Arms and
Ammunition
Ordinance
1902.

Title and
date of taking
effect.

§ SCHEDULE.

PART I.—DEEL I.

English Common Nomenclature.	Scientific Nomenclature.	Dutch Common Nomenclature.
<i>Gewoon Engels Nomenclatuur.</i>	<i>Wetenschappelijk Nomenclatuur.</i>	<i>Gewoon Hollands Nomenclatuur.</i>
Guinea-fowl, common	<i>Numida coronata</i>	Tarentaal.
Guinea-fowl, crested	<i>Guttera edouardi</i>	Kuifkop tarentaal.
Pheasant, red-necked	<i>Pternistes swainsoni</i>	Bosveld faisant.
Pheasant, Cape or noisy Francolin	<i>Francolinus capensis</i>	Kaapse patrijs.
Francolin, coqui or shrimpy	<i>Francolinus coqui</i>	Swempie.
Francolin, crowned	<i>Francolinus sephoena</i>	Kroon-patrijs.
Francolin, Orange River	<i>Francolinus garipeensis</i>	Vrijstaat patrijs.
Francolin, Shelley's	<i>Francolinus shelleyi</i>	Shelley's patrijs.
Francolin, Natal	<i>Francolinus natalensis</i>	Natal patrijs.
Cape redwing	<i>Francolinus levaillanti</i>	Roodvleugel patrijs.
Cape partridge or greywing	<i>Francolinus afer</i>	Bergpatrijs.
Namaqua partridge or sandgrouse	<i>Pteroclorus namaquus</i>	Namaqua-patrijs.
Sandgrouse, spotted	<i>Pterocles variegatus</i>	Gele zandpatrijs.
Sandgrouse, yellow-throated	<i>Pterocles gutturalis</i>	Nachtpatrijs.
Sandgrouse, double-banded	<i>Pterocles bicinctus</i>	Dubbel gebande zandpatrijs.
Bustard, bush	<i>Otis ruficrista</i>	Bos-knorhaan.
Bustard, Natal	<i>Otis varrovii</i>	Natal knorhaan.
Bustard, blue	<i>Otis caerulescens</i>	Blaauw knorhaan.
Bustard, Vaal	<i>Otis vigorsi</i>	Vaal knorhaan.
Bustard, white-quilled or cackling	<i>Otis afreides</i>	Witvleugel knorhaan.
Bustard, black-bellied or silent	<i>Otis melanogaster</i>	Zwartpens knorhaan.
Bustard, Ludwig's	<i>Otis ludvigi</i>	Pauw.
Bustard, Stanley	<i>Otis cafra</i>	Veldpauw.
Bustard, Kori	<i>Otis kori</i>	Gompauw.
Shoveller, Cape	<i>Spatula capensis</i>	Slop.
Pochard, South African	<i>Nyroca capensis</i>	Bruine eend.
Sheldrake, South African	<i>Casarca cana</i>	Bergeend.
Duck, white masked	<i>Dendrocygana viduata</i>	Nonnetje eend.
Duck, knob-billed	<i>Sarcidiornis melanotus</i>	Knobbeleend.
Duck, white-backed	<i>Thalassornis leuconotus</i>	Witrugeend.
Duck, Maccua	<i>Frismatuura maccoa</i>	Maccou-eend.
Duck, black	<i>Anas sparsa</i>	Zwarte-eend.

* See Proc. (Admn.) No. 22 of 1906, fixing date at 2nd March, 1906.

§ This Schedule was substituted by Proc. (Admn.) No. 15 of 1910.

English Common Nomenclature.	Scientific Nomenclature.	Dutch Common Nomenclature.
<i>Gewoon Engels Nomenclatuur.</i>	<i>Wetenschappelijk Nomenclatuur.</i>	<i>Gewoon Hollands Nomenclatuur.</i>
Teal, red-billed	<i>Anas erythrorhyncha</i>	Roodbekend.
Teal, yellow-billed	<i>Anas undulata</i>	Geelbek.
Teal, Hottentot	<i>Anas punctata</i>	Gevlekte eend.
Teal, Cape	<i>Anas capensis</i>	Teeleendje-kaapse smee.
Goose, spur-winged	<i>Plectropterus gambensis</i>	Wilde makouw.
Goose, Egyptian	<i>Chenalopæ aegyptiacus</i>	Wilde gans-Nyigansberg-gans.
Goose, African dwarf	<i>Nettapus auritus</i>	Dwerggans.
Hare, Cape	<i>Lepus capensis</i>	Vlakte-haas.
Hare, rock	<i>Lepus saxatilis</i>	Kolhaas.
Hare, red	<i>Lepus crassicaudatus</i>	Kliphaas.
Blesbuck	<i>Damaliscus albifrons</i>	Blesbok
Bushbuck	<i>Tragelaphus sylvaticus</i>	Bosbok.
Duiker	<i>Cephalophus grimmi</i>	Duiker.
Duiker, red	<i>Cephalophus natalensis</i>	Umzumbi.
Grysbuck	<i>Rhaphicercus melanotis</i>	Grijsbok.
Klipspringer	<i>Oreotragus saltator</i>	Klipspringer.
Oribi	<i>Ourebia scoparia</i>	Oribi.
Pallah or rooibuck	<i>Aepyceros melampus</i>	Rooibok or impala.
Reedbuck	<i>Cervicapra arundinum</i>	Rietbok.
Rhebuck, rooi	<i>Cervicapra fulverifula</i>	Rooi reebok.
Rhebuck, vaal	<i>Pelea capreola</i>	Vaal reebok.
Springbuck	<i>Antidorcas euchoire</i>	Springbok.
Steenbuck	<i>Rhaphicercus campestris</i>	Steenbok.
Waterbuck	<i>Cobus ellipsiprymnus</i>	Waterbok.
Warthog	<i>Phacochoerus aethiopicus</i>	Vlakovark.

PART II.—BIG GAME.

Deel II.—Grootwild.

Crane, crested	<i>Chrysopelargus balearica</i>	Mahem.
Ostrich	<i>Struthio australis</i>	Vogelstruis.
Antelope, roan	<i>Hippotragus equinus</i>	Bastaard gemsbok or bastaard eland.
Antelope, sable	<i>Hippotragus niger</i>	Zwartwitpens.
Buffalo	<i>Buffelus caffer</i>	Buffel.
Eland	<i>Taurotragus oryx</i>	Eland.
Elephant	<i>Elephas africanus</i>	Olifant.
Gemsbok	<i>Oryx gazella</i>	Gemsbok.
Giraffe	<i>Giraffa capensis</i>	Kameel.
Hartebeest, red	<i>Bubalis caama</i>	Hartebeest.
Hartebeest, Lichtenstein	<i>Bubalis lichtensteini</i>	Mof hartebeest.
Hippo	<i>Hippopotamus amphibius</i>	Zeekoe.
Kudu	<i>Strepsiceros kudu</i>	Koedoe.
Rhinoceros	<i>Rhinoceros bicornis</i>	Rhenoster.
Sassaby	<i>Damaliscus lunatus</i>	Bastaard hartebeest.
Wildebeest, blue	<i>Connochoetus taurinus</i>	Blauw wildebeest.
Wildebeest, black	<i>Connochoetus gnu</i>	Zwart wildebeest.
Zebra	<i>Equus burchelli</i>	Kwagga or zebra.

No. 8 of 1905.]

[Promulgated 15th September, 1905.]

AN ORDINANCE

TO APPLY A SUM OF MONEY FOR THE SERVICE OF THE YEAR
ENDED THE 30TH DAY OF JUNE 1903.

Assented to 9th September, 1905.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. The public revenue of this Colony is hereby charged towards the service of the year ended the 30th day of June 1903 with a sum of sixty-two thousand seven hundred and fifty-six pounds five shillings and ninepence sterling in addition to the sum mentioned in the Appropriation Ordinance 1903 the Appropriation Ordinance (No. 2) 1903 and the Appropriation Ordinance (No. 1) 1904.

Public revenue to be charged with £62,756 5s. 9d.

2. The money granted by this Ordinance shall be applied to the purposes and services set forth in the Schedule annexed hereto.

How to be applied.

3. The moneys granted by this Ordinance shall not be issued or applied to any use intent or purpose other than the particular services to which the said amounts have been granted respectively by this Ordinance.

Not to be applied otherwise than as granted.

4. The Colonial Treasurer being duly authorized thereto by warrant under the hand of the Lieutenant-Governor shall issue and pay from time to time such sums of money as shall be required for the purposes hereinbefore mentioned not exceeding in the whole the sums respectively in that behalf specified and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant; and the receipts of the persons to whom such sums shall have been so paid shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given.

The Treasurer to make payments under warrant of the Lieutenant-Governor.

5. This Ordinance may be cited as The Appropriation Ordinance (No. 1) 1905.

Title.

SCHEDULE.

No. of Vote.	Title of Vote.	Accounting Officer.	Amount.
IV. b.	Public Works Department	Director of Public Works	£62,756 5s. 9d.

No. 9 of 1905.]

[Promulgated 15th September, 1905.]

AN ORDINANCE

TO APPLY A SUM OF MONEY FOR THE SERVICE OF THE YEAR
ENDED THE 30TH DAY OF JUNE, 1905.

Assented to 9th September, 1905.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Public
revenue to be
charged with
£256,673.

1. The public revenue of this Colony is hereby charged towards the service of the year ended the 30th day of June 1905 with a sum of two hundred and fifty-six thousand six hundred and seventy-three pounds in addition to the sum mentioned in the Appropriation Ordinance (No. 3) 1904.

How to be
applied.

2. The money granted by this Ordinance shall be applied to the purposes and services set forth in the Schedule annexed hereto.

Not to be
applied
otherwise
than as
granted.

3. The moneys granted by this Ordinance shall not be issued or applied to any use intent or purpose other than the particular services to which the said amounts have been granted respectively by this Ordinance.

The Treasurer
to make
payments
under warrant
of the
Lieutenant-
Governor.

4. The Colonial Treasurer being duly authorized thereto by warrant under the hand of the Lieutenant-Governor shall issue and pay from time to time such sums of money as shall be required for the purposes hereinbefore mentioned not exceeding in the whole the sums respectively in that behalf specified and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant; and the receipts of the persons to whom such sums shall have been so paid shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given.

Title.

5. This Ordinance may be cited as The Appropriation Ordinance (No. 2) 1905.

SCHEDULE.

No. of Vote.	Title of Vote.	Accounting Officer.	Amount.
II.	Pensions and Gratuities	Accountant-General ..	£10,500
III.	His Excellency the Lieutenant-Governor	The Private Secretary to His Excellency the Lieutenant-Governor	900
V.	Colonial Secretary ..	Assistant Colonial Secretary	11,017
XI.	Labour Importation ..	Superintendent	2,794
XII.	Attorney-General ..	Secretary to the Law Department	2,676
XXI.	Prisons	Director of Prisons ..	18,920
XXII.	Native Affairs	Secretary for Native Affairs	1,717
XXX.	Land	Under Secretary for Lands	20,232
XXXII.	Surveyor-General ..	Surveyor-General	1,842
XXXV.	Grants-in-Aid (General)	Assistant Colonial Secretary	6,247
XXXIX.	Census	Commissioner of Census ..	12,950
XL.	Miscellaneous	Accountant-General ..	22,715
XLI.	Burgher Land Settlements	Assistant Colonial Secretary for Local Government	54,163
XLII.	Selati Railway	Accountant-General ..	90,000
Total			<u>£256,673</u>

No. 10 of 1905.]

[Promulgated 15th September, 1905.]

AN ORDINANCE

TO APPLY A SUM OF MONEY FOR THE SERVICE OF THE YEAR
ENDING THE 30TH DAY OF JUNE, 1906.

Assented to 9th September, 1905.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Public
revenue to be
charged with
£3,569,151.

1. The public revenue of this Colony is hereby charged towards the service of the year ending the 30th day of June 1906 with a sum of three million five hundred and sixty-nine thousand one hundred and fifty-one pounds sterling.

How to be
applied.

2. The money granted by this Ordinance shall be applied to the purposes and services set forth in the Schedule annexed hereto.

Not to be
applied
otherwise
than as
granted.

3. The moneys granted by this Ordinance shall not be issued or applied to any use intent or purpose other than the particular services to which the said amounts have been granted respectively by this Ordinance.

The Treasurer
to make
payments
under warrant
of the
Lieutenant-
Governor.

4. The Colonial Treasurer being duly authorized thereto by warrant under the hand of the Lieutenant-Governor shall issue and pay from time to time such sums of money as shall be required for the purposes hereinbefore mentioned not exceeding in the whole the sums respectively in that behalf specified and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant; and the receipts of the persons to whom such sums shall have been so paid shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given.

Title.

5. This Ordinance may be cited as The Appropriation Ordinance (No. 3) 1905.

Schedule of Estimated Expenditure for the Year 1905-06.

No. of Vote.	Title of Vote.	Accounting Officer.	Amount.
			£
I.	H.E. the Lieutenant-Governor	Private Secretary to H.E. the Lieutenant-Governor	6,660
II.	Executive and Legislative Councils	Clerk to the Councils ..	15,391
III.	Attorney-General ..	Secretary to the Law Department	28,625
IV.	Sheriff	"	7,670
V.	Commissioner of Patents	"	4,690
VI.	Registrar of Deeds ..	"	11,745
VII.	Master of the Supreme Court	"	10,910
VIII.	Superior Courts.. ..	"	33,300
IX.	Magistrates	"	129,402
X.	Lunacy	Medical Superintendent ..	24,934
XI.	Town Police	Commissioner of Police ..	351,677
XII.	Prisons	Director of Prisons ..	175,717
XIII.	Colonial Secretary, Division I.	Assistant Colonial Secretary, Division I.	66,808
XIV.	Colonial Secretary, Division II.	Assistant Colonial Secretary, Division II.	19,344
XV.	Volunteers	Commandant	183,171
XVI.	Education	Director of Education ..	358,390
XVII.	Printing & Stationery..	Government Printer ..	64,357
XVIII.	Immigration	Assistant Colonial Secretary, Division I.	8,840
XIX.	Census	Commissioner of Census ..	5,000
XX.	Public Health	Medical Officer of Health..	111,970
XXI.	Pretoria Hospital ..	Medical Superintendent ..	18,199
XXII.	Grants-in-Aid (General)	Assistant Colonial Secretary, Division II.	54,684
XXIII.	Grants-in-Aid to Local Authorities	"	60,450
XXIV.	Native Affairs	Secretary for Native Affairs	95,761
XXV.	Game Preservation ..	Assistant Colonial Secretary, Division I.	5,500
XXVI.	Treasury	Accountant-General ..	17,624
XXVII.	Internal Revenue ..	"	26,800
XXVIII.	Audit	Assistant Auditor-General	12,518
XXIX.	Customs	Director of Customs ..	70,555
XXX.	Posts and Telegraphs ..	Postmaster-General ..	416,179
XXXI.	Pensions and Gratuities	Accountant-General ..	11,300
XXXII.	Miscellaneous	"	10,000
XXXIII.	Selati Railway	"	60,000
XXXIV.	Mines	Secretary to the Mines Department	124,656
XXXV.	Labour Importation ..	Superintendent	27,456
XXXVI.	Lands and Surveys ..	Under Secretary for Lands	63,187
XXXVII.	Public Works	Under Secretary for Public Works	701,055
XXXVIII.	Irrigation and Water Supply	Director of Irrigation ..	56,268
XXXIX.	Agriculture and Forests	Director of Agriculture ..	118,358
		Total	£3,569,151

No. 11 of 1905.]

[Promulgated 15th September, 1905.]

AN ORDINANCE

TO PROVIDE OUT OF TREASURY BALANCES FOR THE CONSTRUCTION OF CERTAIN WORKS AND OTHER PURPOSES.

Assented to 9th September, 1905.

WHEREAS it is desirable to make provision out of the balances in the hands of the Colonial Treasurer for certain capital and other expenditure not properly chargeable upon the ordinary revenue of the Colony;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Power of Lieutenant-Governor to authorize issue and payment of certain balances of moneys unappropriated on 30 June 1905.

1. It shall be lawful for the Lieutenant-Governor by warrant under his hand to authorize the Colonial Treasurer to issue and pay from time to time out of any balances remaining in his hands on the thirtieth day of June 1905 and not appropriated by law for any other purpose such sums of money as shall be required for the purposes specified in the Schedule attached to this Ordinance not exceeding the amounts respectively specified for such purposes.

Moneys issued under Ordinance to be applied only to purposes set forth in Schedule.

2. All sums of money issued under the provisions of this Ordinance shall be applied to the purposes and services set forth in the said Schedule until the same are completed and shall not be used or applied for any other purpose.

Colonial Treasurer to issue moneys specified in warrant of Lieutenant-Governor to persons designated in Schedule.

3. The Colonial Treasurer being duly authorized as provided herein by warrant under the hand of the Lieutenant-Governor shall issue the sums of money specified in such warrants to the persons designated in the Schedule hereto as accounting officers for the respective votes and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrants; and the receipts of the accounting officers aforesaid shall be to him a full discharge for the sums for which such receipts shall have been given.

Title.

4. This Ordinance may be cited as The Appropriation Ordinance (Extraordinary) 1905.

SCHEDULE.

Letter of Vote.	Nature of Expenditure.	Accounting Officer.	Amount.
A.	Telegraph and Telephone Construction	Postmaster-General ..	£ 76,986
B.	Civil Contingency Fund ..	Accountant-General ..	10,000
C.	Public Works	Under Secretary for Public Works	88,000
D.	Extirpation of Cattle Disease ..	Assistant Director of Agriculture	50,000
E.	Advances to Pretoria Municipality	Accountant-General ..	72,456
F.	Salaries to Z.A.R. Officials ..	.. .. .	50,000
Total			£347,442

No. 12 of 1905.]

[Promulgated 15th September, 1905.]

AN ORDINANCE

TO PROVIDE OUT OF TREASURY BALANCES FOR THE CONSTRUCTION OF CERTAIN WORKS AND OTHER PURPOSES.

Assented to 9th September, 1905.

WHEREAS it is desirable to make provision out of the balances in the hands of the Colonial Treasurer for certain capital and other expenditure not properly chargeable upon the ordinary revenue of the Colony;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Power of Lieutenant-Governor to authorize issue and payment of certain balances of moneys unappropriated on 30 June 1904.

1. It shall be lawful for the Lieutenant-Governor by warrant under his hand to authorize the Colonial Treasurer to issue and pay from time to time out of any balances remaining in his hands on the thirtieth day of June 1904 and not appropriated by law for any other purpose such additional sums of money as shall be required for the purposes specified in the Schedule attached to this Ordinance not exceeding the amounts respectively specified for such purposes.

Moneys issued under Ordinance to be applied only to purposes set forth in Schedule.

2. All sums of money issued under the provisions of this Ordinance shall be applied to the purposes and services set forth in the said Schedule until the same are completed and shall not be used or applied for any other purpose.

Colonial Treasurer to issue moneys specified in warrant of Lieutenant-Governor to persons designated in Schedule.

3. The Colonial Treasurer being duly authorized as provided herein by warrant under the hand of the Lieutenant-Governor shall issue the sums of money specified in such warrants to the persons designated in the Schedule hereto as accounting officers for the respective votes and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrants; and the receipts of the accounting officers aforesaid shall be to him a full discharge for the sums for which such receipts shall have been given.

Title.

4. This Ordinance may be cited as The Appropriation Ordinance (Additional Extraordinary) 1905.

SCHEDULE.

Letter of Vote.	Nature of Expenditure.	Accounting Officer.	Amount.
B.	Telegraph and Telephone Re-construction	Postmaster-General ..	£12,500
C.	Extirpation of Cattle Disease	Assistant Director of Agriculture	10
D.	Compensation for loss of Concession Rights	Accountant-General ..	47,090
E.	Purchase of Farm " Bergvlei "	Under Secretary for Lands	20,085
F.	Waterberg Light Railway ..	Accountant-General ..	21,000
Total			£100,685

No. 13 of 1905.]

[Promulgated 15th September, 1905.]

AN ORDINANCE

TO AMEND THE OCCUPATION FARMS ORDINANCE 1904.

Assented to 9th September, 1905.

WHEREAS it is expedient to amend the Occupation Farms Ordinance 1904 in certain respects;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. Notwithstanding anything in section *thirteen* of the Occupation Farms Ordinance 1904 contained the Commissioner of Lands may cause freehold titles to be issued in the circumstances and manner prescribed by the said section where two or more occupation farms adjoin one another and are being developed as one property; provided that the permanent improvements effected on any one or more of such farms are at least equal to the unimproved value of the aggregate area of both or all of such farms.

†2. Whenever any person who has been allotted a farm or portion of a farm under Law No. 8 of 1886 *or an occupation lot or erf as in the Occupation Farms Ordinance 1904 defined** shall not have substantially complied with the provisions thereof with regard to occupation and does not appear on such list as is mentioned in section *two* of the said Ordinance the Lieutenant-Governor may declare that all rights of such person under the said Law No. 8 of 1886 including rights of compensation for improvements shall be forfeited; provided always that no such declaration of forfeiture shall take place until the notice shall have been published for three consecutive weeks in the *Gazette* calling upon such person to show cause within six months of the first publication thereof to the Lieutenant-Governor against any such declaration of forfeiture and he shall have failed either in person or in writing to show good cause against such declaration as aforesaid.

A copy of such notice in the *Gazette* shall if possible be served personally on such person.

3. Freehold title issued under the said Ordinance or this Ordinance in exchange for occupation title shall be issued subject to all existing conventional or tacit mortgages.

4. This Ordinance may be cited for all purposes as the Occupation Farms Amendment Ordinance 1905 and shall be read as one with the Occupation Farms Ordinance 1904.

† For Govt. Notices *re* forfeiture of farms, etc., see Chronological Table.

* Words in italics have been inserted by Act No. 31 of 1907, sec. 5.

Power to issue freehold title in exchange for occupation title where improvements on one farm only held adjoining another.

Forfeiture of rights granted under Law No. 8 of 1886 in case of persons not complying with its provisions and not appearing on list mentioned in Ordinance No. 25 of 1904.

Freehold title when issued be subject existing mortgages.

No. 14 of 1905.]

[Promulgated 15th September, 1905.]

AN ORDINANCE

TO AMEND THE TRANSFER DUTY PROCLAMATION 1902.

Assented to 9th September, 1905.

WHEREAS it is expedient to amend in certain respects the Transfer Duty Proclamation 1902 (in this Ordinance referred to as "the principal law");

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. Section *three* of the principal law shall be and is hereby repealed and there shall be substituted therefor the following provisions:—

For text, see Proclamation No. 8, 1902, section three.

Repeal of section *three* of Proclamation Transvaal No. 8 of 1902 and substitution of new provisions as to persons chargeable with transfer duty.

2. Section *four* of the principal law shall be and is hereby repealed and there shall be substituted therefor the following provisions:—

For text, see Proclamation No. 8, 1902, section four.

Repeal of section *four* of Proclamation Transvaal No. 8 of 1902 and substitution of new provisions as to ascertainment of value of fixed property.

3. The Lieutenant-Governor may with the advice of the Executive Council allow exemption from transfer duty upon sworn declaration being made or other satisfactory proof being given as to the facts herein mentioned:

(a) whenever any fixed property is transferred by way of gift for public municipal religious or charitable uses exclusively;

(b) whenever any fixed property is acquired by or on behalf of and solely for the use and purposes of any public hospital or public benevolent institution which is carried on exclusively for benevolent purposes and not for profit or gain to any person concerned or connected therewith.

Exemption from duty of land transferred by way of gift for public municipal religious or charitable purposes.

Exemption from duty of exchanges of small mining areas made for more economic working of the same.

4. Whenever an exchange is made of portions of adjoining properties held under claim licence mynpacht or other mining title and in addition to the prescribed declarations a certificate signed by or on behalf of the Commissioner of Mines is produced stating that it has been shown to his satisfaction that such exchange is made solely and bona fide for mining purposes and is necessary or instrumental to the proper or more economic working of the minerals no duty shall be chargeable except in respect of any consideration passing in connection with such exchange; provided always that

(a) the certificate of the Commissioner of Mines shall not be given except where properties concerned are actually being worked or about to be worked for minerals;

(b) the portion of property given or taken in exchange shall not exceed an area equal to ten claims respectively in extent;

(c) where the property to be exchanged shall exceed the area mentioned duty shall be paid in respect of the excess area.

Mode of assessing duty where fixed property of deceased persons distributed among heirs.

5. If in the administration of the estate of a deceased person any redistribution of the fixed property shall take place amongst the children or descendants of the deceased or between such children or descendants and the surviving spouse transfer duty shall be payable in respect of such redistribution only on the value of any fixed property belonging to the estate taken over by any of the persons aforesaid in excess of the share or portion of the fixed property to which any such person was entitled *ab intestato* or by testamentary inheritance or by virtue of a right of community of property.

Amendment of section *nine* of Proclamation Transvaal No. 8 of 1902.

6. Section *nine* of the principal law shall be and is hereby amended by the omission therefrom of the words "was first entered into" and the substitution therefor of the words "became binding upon the parties thereto."

Exemption from transfer duty.

7. Section *thirteen* of the principal law shall be and is hereby amended by the addition thereto of the following subsections:—

For text, see Proclamation No. 8, 1902, section thirteen (10) (11).

Power of registration officer to refer claims for exemption to Colonial Treasurer.

8. Whenever any claim for exemption shall be made to a registration officer as provided in sections *sixteen* and *seventeen* of the principal law such registration officer may notwithstanding anything in the said sections contained refer the claim to the Colonial Treasurer and thereafter such claim shall be one determinable between the Colonial Treasurer and the claimant and for all purposes of the said section *seventeen* the Colonial Treasurer shall be substituted for the registration officer.

Repeal of section *thirty-three* of Proclamation Transvaal No. 8 of 1902 and substitution therefor of new provisions.

9. Section *thirty-three* of the principal law shall be and is hereby repealed and there shall be substituted therefor the following provisions:—

For text, see Proclamation No. 8, 1902, section thirty-three.

10. Section *thirty-four* of the principal law shall be and is hereby repealed and there shall be substituted therefor the following provision:—

For text, see Proclamation No. 8, 1902, section thirty-four.

Repeal of section *thirty-four* of Proclamation Transvaal No. 8 of 1902 and substitution of new provision.

11. (1) The Lieutenant-Governor may from time to time by Proclamation in the *Gazette* prescribe forms of declaration either in addition to or in substitution for those set forth in the Schedule to the principal law and any form of declaration so prescribed shall be deemed to be the declaration in the form required by the principal law as amended by this Ordinance.

Power of Lieutenant-Governor to prescribe forms of declaration in addition to or in substitution for scheduled forms.

(2) All declarations whether in the form set forth in the Schedule to the principal law or prescribed under the powers of this section shall be made before such persons as are or shall be by law entitled to administer oaths.

12. If two or more fixed properties held under separate registered titles are included in one transaction the declarations relative thereto shall disclose all the properties and also the full consideration payable on the whole transaction and transfer duty shall be payable in one sum in respect thereof unless the Colonial Treasurer shall consent to an apportionment of duty in respect of the several properties aforesaid as they are severally transferred.

Duty to be payable on transaction as a whole though it may be made up of transfer of more than one property.

13. No legal proceedings whatever shall be brought by any person against the Colonial Treasurer or any Revenue Officer in respect of any matter or dispute arising out of the administration of the principal law as amended by this Ordinance unless seven days' notice at least shall have been served at the office of the Colonial Treasurer; provided that if the legal proceedings aforesaid are commenced in the Witwatersrand High Court the notice prescribed by this section may be served upon the Receiver of Revenue Johannesburg.

Notice of legal proceedings to be given to Treasury.

14. This Ordinance may be cited for all purposes as the Transfer Duty Amending Ordinance 1905, and shall be read as one with the principal law and shall take effect from and after the first day of November 1905.

Title and date of taking effect.

Repealed by vol 24 of 1913

No. 15 of 1905.] [Promulgated 22nd September, 1905.]

AN ORDINANCE

TO AMEND THE ADMINISTRATION OF ESTATES PROCLAMATION
1902.

Assented to 18th September, 1905.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Interpre-
tation of
terms.

1. In this Ordinance the expression "duty" shall mean the stamp duty payable on the estates of deceased persons under Law No. 15 of 1899 or any amendment thereof; the word "Proclamation" shall mean the Administration of Estates Proclamation 1902.

Summary
appointment
of executor
to estates
of persons
not resident
in this Colony
whose estate
consists only
of shares in
any company.

2. If any person not a resident in this Colony and not being the owner of any property therein other than shares in any company chargeable with duty shall die it shall be lawful for the Master summarily and without observance of the usual and customary forms and without requiring security or an account of the administration and distribution of the estate to sign letters of administration produced to him under section *thirty-six* of the Proclamation or if no such letters are produced to appoint an executor dative to administer the estate of such deceased person or to dispense with the appointment of an executor dative and direct the manner in which such estate shall be administered; provided always

(a) that an advertisement shall have been inserted in the *Gazette* and in any newspaper published and circulating in this Colony calling upon all persons having claims due or not yet due as creditors against the deceased to lodge such claims and upon all persons claiming to be entitled either *ab intestato* or under any will or other testamentary disposition of the deceased to any such shares aforesaid to lodge objection with the Master within three weeks from the publication of such notice;

(b) that no such claim or objection shall have been so lodged;

(c) that the duty payable in respect of such shares aforesaid shall be paid or secured to the satisfaction of the Master prior to any such appointment or direction.

Master may
dispense with
appointment
of executor
in estates of
small value.

3. It shall be lawful for the Master to dispense with the appointment of an executor in estates not exceeding the value of one hundred pounds and to direct how such estate shall be administered.

4. Section *thirty-six* of the Proclamation shall be and is hereby amended by the addition thereto of the following subsection:—

For text, see Proclamation No. 28, 1902, section thirty-six (4).

5. Section *sixty-eight* of the Proclamation shall be and is hereby amended by the substitution of the words “two hundred” for the words “one hundred” occurring in the said section.

6. If the Master after due enquiry shall be of opinion that it would be to the advantage of persons interested in an estate to sell any property belonging to such estate out of hand instead of by public auction he may grant the necessary authority to the executor so to act; provided no provision has been made in the will of the deceased to the contrary.

7. If it should become necessary to sub-divide any immovable property in which any minor is interested and the Master after due enquiry and after inspection of the property if necessary by himself or by some suitable person appointed by him is satisfied that the proposed division is a fair one he may consent to such division on behalf of the minor or minors interested.

8. Section *ninety-three* of the Proclamation shall be and is hereby repealed and there shall be substituted therefor the following provision:—

For text, see Proclamation No. 28, 1902, section ninety-three.

9. The provisions of section *ninety-five* of the Proclamation shall be applicable to every *curator bonis* appointed under the provisions of the Lunacy Proclamation 1902 or of the Leprosy Ordinance 1904 or of any law amending the same.

10. Section *one hundred and four* of the Proclamation shall be and is hereby amended by the addition at the end thereof of the following words “provided always that the Master may in consultation with the tutor or natural guardian of any minor invest the whole or any portion of any moneys paid into the Guardians’ Fund to the credit of such minor under the provisions of the *fifty-third sixty-third ninety-fifth*

Amendment of section *thirty-six* of Proclamation Transvaal No. 28 of 1902.

Master may summarily appoint executor dative when value of estate does not exceed two hundred pounds.

Master may authorize sale of property out of hand.

Master may consent to sub-division of immovable property in which any minor is interested.

Prohibition of re-marriage of surviving parent till minors’ shares have been secured except where estate under one hundred pounds.

Provisions of section *ninety-five* of the Proclamation Transvaal No. 28 of 1902 made applicable to the Lunacy Proclamation 1902 or the Leprosy Ordinance 1904.

Master may invest moneys of minors paid into Guardians’ Fund in purchase of immovable property.

or *ninety-sixth* sections of this Proclamation in the purchase of immovable property in this Colony to be transferred into the name of such minor."

Statement of unclaimed moneys to be published by banks companies and others and amounts remaining unclaimed to be paid into Guardians' Fund.

11. Every banking or other company and every firm partnership or other person trading or carrying on business within this Colony shall in the month of January of each year publish in the *Gazette* a detailed statement of all moneys which were in its hands or in the hands of any branch or agents in this Colony of such company firm or partnership or individual on the thirty-first day of December last past and which were not the property of such company firm partnership or individual and on which no valid lien existed and which moneys shall at date of publication have remained unclaimed by the respective owners thereof for a period of five years or more; and such statement shall as far as practicable set forth the full names and last known addresses of such owners and shall be subscribed by the person publishing the same. And such person shall make an affidavit in the form contained in the schedule hereto and shall forward the same to the Master not later than the date of publication of such statement and in default thereof he shall be deemed not to have published such statement; and after the expiration of three months from the date of such publication all such sums of money still remaining unclaimed shall be deposited in the Guardians' Fund to be administered by the Master in terms of the provisions of the Proclamation relating to the Guardians' Fund so far as the same are applicable.

Penalty on failure to publish statement or pay in unclaimed moneys.

12. If any such company firm partnership or individual shall fail to publish the return mentioned in the last preceding section or to pay such unclaimed moneys into the Guardians' Fund then in the case of a company the secretary and every director thereof in this Colony and every agent or officer thereof having the custody or control of such unclaimed moneys and in the case of a firm or partnership every member thereof in this Colony and every agent or officer having the custody and control as aforesaid and in the case of an individual such individual shall be liable on conviction to a fine not exceeding five hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding twelve months; and if the person so convicted shall fail to publish such statement or pay in such money within a period to be fixed by the Court by which he has been convicted he shall be liable to be imprisoned until such statement shall be published or such money paid in.

Provision of the Proclamation Transvaal No. 28 of 1902 and of this Ordinance not applicable to any labourer introduced into this Colony under Ordinance No. 17 of 1904.

13. The provisions of the Proclamation as amended by this Ordinance shall not apply to any labour introduced into this Colony under the Labour Importation Ordinance 1904; provided that the superintendent on receiving the return mentioned in section *sixteen* of the Labour Importation Ordinance shall forthwith collect and realise the effects of the deceased and after payment of any claims against the deceased's estate in this Colony forward the proceeds thereof together with any other moneys of the deceased to an officer

recognised by the Government of the country of origin of the deceased for distribution by him amongst the persons entitled thereto according to the law of that country.

14. This Ordinance may be cited for all purposes as the Administration of Estates Proclamation Amendment Ordinance 1905 and shall take effect from and after a date to be fixed by Proclamation by the Lieutenant-Governor and published in the *Gazette*.*

Title and
date of taking
effect.

SCHEDULE.

I.....of.....(state capacity of deponent) make oath and say that the return of unclaimed moneys in the hands of.....subscribed by me and published under the provisions of Ordinance No.....section.....in the *Gazette* of the.....is to the best of my knowledge and belief a true and complete return as required by the said Ordinance; and that during the year ending the thirty-first day of December now last past no unclaimed moneys have been transferred by or on behalf of the said.....from this Colony to any British possession or foreign country or placed to any suspense or other account with a view to evading the provisions of this Ordinance and that all amounts which ought to be included in the said return are duly included therein.

* Date of operation of Ordinance fixed as 1st October, 1905, by Proc. (Admn.) No. 93 of 1905.

*Repealed by Act 26
1905*

No. 16 of 1905.]

[Promulgated 22nd September 1905.]

AN ORDINANCE

TO AMEND THE LAW RELATING TO STAMP DUTIES.

Assented to 18th September, 1905.

WHEREAS it is expedient to amend in certain respects the law relating to Stamp Duties;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Interpretation.

1. In this Ordinance the term "principal law" shall mean the Stamp Duties Amendment Proclamation 1902.

Power of Lieutenant-Governor to declare that impressed stamps be used in lieu of adhesive stamps on certain documents.

2. Notwithstanding anything in section *eight* of the principal law contained or in any other law relating to stamp duties it shall be lawful for the Lieutenant-Governor to declare and require by Proclamation

(a) that the stamp duty on any particular description of instrument shall be denoted by impressed stamps instead of by adhesive stamps;

(b) that the stamp duty on any particular description of instrument shall be denoted by stamps appropriated to such description of instrument in accordance with the provisions of section *fifteen* of the principal law;

(c) that stamped paper or material shall be used for any particular description of instrument liable to stamp duty; and the Lieutenant-Governor may from time to time make alter and repeal regulations in relation to matters provided for by this section and may prescribe penalties for the breach thereof not exceeding a fine of twenty pounds.

Amendment of section *fourteen* of Proclamation Transvaal No. 12 of 1902.

3. Sub-section (3) of section *fourteen* of the principal law shall be and is hereby amended by the addition thereto of the following proviso:—

For text, see Proclamation No. 12, 1902, section fourteen (3).

Amendment of section *sixteen* of Proclamation Transvaal No. 12 of 1902.

4. Section *sixteen* of the principal law shall be and is hereby amended by the addition of the following sub-sections (d) and (e) before the provisos to the said section:—

For text, see Proclamation No. 12, 1902, section sixteen (d) (e).

Public officials to impound unstamped instruments.

5. Save in the circumstances described in sub-section (c) of section *sixteen* of the principal law it shall be the duty of every public officer and of every person authorised to receive or take evidence into whose hands may come any instrument liable to duty but not stamped as required by law or on which any stamp affixed thereto is not duly defaced to impound and

retain such instrument and forthwith cause the same to be forwarded to the Colonial Treasurer in order that any duty or penalty thereon may be recovered.

6. Section *thirty-four* of the principal law shall be and the same is hereby repealed.

Repeal of section *thirty-four* of Proclamation Transvaal No. 12 of 1902.

7. A note or certificate made on any instrument under the official stamp of the Colonial Treasurer and signed by him or by an officer acting under his authority or on his behalf stating that the stamps affixed thereon represent the true amount of stamp duty to which the instrument is liable shall be conclusive in all courts and other places of that fact.

Note by Colonial Treasurer on instrument that the stamps thereon represent correct duty to be conclusive.

8. The Colonial Treasurer may in such cases as he thinks fit authorise or direct that when two or more signatures denoting receipts of payment of money of one pound or upwards are subscribed on one document the stamp duty in respect of such receipts may be paid by means of a stamp for the total amount of duty payable being affixed to and cancelled on such document instead of by a separate stamp for each signature and any stamp duty paid as aforesaid may be apportioned among the persons who would otherwise be liable for the same and deducted from the payments in respect of which stamps should have been affixed by such persons.

Stamp duty on two or more receipts on same document.

9. Any person who shall;

(a) insert or cause to be inserted in or upon any instrument or stamp affixed thereon a false date; or

(b) alter any date in or upon any instrument or upon any stamp affixed thereon with intent that such instrument may appear to have been duly stamped or stamped within the time required by law;

shall be liable on conviction to the penalties prescribed by law for fraud.

Penalty for false stamping.

10. Every Receiver of Revenue or other public officer charged with the duty of defacing stamps may whenever he deems it necessary require evidence on oath or other satisfactory proof of the date when any instrument presented to him for the purpose of defacing any stamp thereto affixed was executed or where any such instrument was executed outside this Colony of the date when such instrument was first received in this Colony.

Power of Receiver of Revenue to require evidence of date of execution of instruments

11. From and after the taking effect of this Ordinance the duties set forth in the schedule hereto shall be chargeable upon the several instruments mentioned therein and in the manner thereby provided and the provisions of the said schedule shall be deemed to be part of this Ordinance and of any other law relating to stamp duties.

New provisions as to stamp duties on leases and other documents.

Sub-section (1) of section *six* of the Stamp Duties Amendment Ordinance 1904 shall be and is hereby repealed.

Stamp duty
on cessions
of leases.

12. Notwithstanding anything in the principal law contained the stamp duty in respect of any cession or transfer of a lease shall be payable by the person to whom the cession or transfer is made and no such cession or transfer shall be binding unless expressed by an instrument in writing and every such instrument shall state the consideration given for or in connection with the cession or transfer and no consideration shall be recoverable which is not so stated. For any omission or failure to state or disclose in any such instrument the true and full consideration passing the parties thereto shall be severally liable to a penalty of one hundred pounds.

Exemption
for bonds
given as
collateral
security.

13. Whenever it is shown to the satisfaction of the Registrar of Deeds Registrar of Mining Rights or District Registrar of Mining Rights as the case may be that any bond is given or executed solely by way of additional auxiliary or collateral security and that another bond has already been given for the same debt or amount intended to be secured and that duty has been duly paid thereon such and all following bonds for the same capital sum shall be registered free of such duty by the Registrar of Deeds Registrar of Mining Rights or District Registrar of Mining Rights as the case may be upon production from the Registration Officer who registered the first bond of a certificate that the full stamp duty has been affixed to such bond or upon the production of the first registered bond showing cancelled stamps to the full amount of such bond.

Exemption.

14. The Second Schedule to the principal law shall be amended by the addition to the exemptions from stamp duty under the head of "Receipts" of the following clause:—

For text, see Second Schedule of Proclamation No. 12, 1902.

Title.

15. This Ordinance shall take effect on and from the first day of November 1905 and may be cited for all purposes as the Stamp Duties Amendment Ordinance 1905 and shall be read as one with the principal law and any law amending the same.

SCHEDULE.

TABLE OF STAMP DUTIES CHARGEABLE ON INSTRUMENTS IN ACCORDANCE WITH SECTION ELEVEN.

1. *Hiring agreement, lease, or agreement of lease of any land, building or stand.*

HIRING AGREEMENTS—MONTHLY LETTINGS.

(1) *Superseded by Act No. 15 of 1909, Third Schedule.*

LEASES FOR ONE YEAR OR MORE.

(2) Any lease or agreement of lease for a term of one year or longer which is not liable for transfer duty:—

(a) *Superseded by Act No. 15 of 1909, Third Schedule.*

(b) For the purposes of duty the period of the lease shall mean the period for which both lessor and lessee are bound.

(c) Any renewal of a lease shall for the period thereof be subject to the duty payable on a similar lease for the same period and any renewal or agreement of renewal to be of effect shall be recorded on the instrument or in a supplementary instrument at the time such renewal is agreed upon and shall be duly stamped as required herein.

- (d) In the case of any lease renewable at the option or will of the lessee duty shall be paid at the time of execution only in respect of the period of the lease proper (as defined in clause (b) of this Schedule and in respect of renewals the provisions of clause (c) of this Schedule shall be applicable; but if any such lease is tendered for registration the lessee or holder shall be required before registration is effected to stamp such lease with the further duty payable thereon as if in force for the period or periods for which the lessee has the option or right of renewal.
- (e) Any extension of a lease (other than the renewals provided for in the foregoing provisions) shall be subject only to duty equal to the difference between the duty paid on the original lease and the duty according to the scale aforesaid on the lease as extended.
- (f) If in any case the rent or consideration payable under a lease is stated in kind or produce or otherwise than in money the duty chargeable shall be calculated on the monetary equivalent of such consideration as agreed between the parties and expressed in the lease or if not so agreed or expressed as estimated by the Receiver of Revenue of the district. In case of dispute the person chargeable with duty may appeal to the Colonial Treasurer whose decision shall be final.
- * (g) And "land building or stand" shall include any rights or assets leased or let therewith.
2. *Cession or transfer of any lease or agreement of lease where such cession or transfer is not liable to transfer duty.*
Superseded by Act No. 15 of 1909, Third Schedule.
3. *Cession of any bond liable to stamp duty.*
A fixed stamp duty of two shillings and sixpence shall be paid.
4. *Every certificate of authentication given in this Colony to signatures on documents executed for use outside the Colony.*
Superseded by Act No. 15 of 1909, Third Schedule.

* As amended by Act No. 15 of 1909, sec. 2 (1).

A.D. 1905.]

Municipal Amending.

[Ord. No. 17.]

Repealed by Act No. 9 of 1912
sections 1, 2, 8 + 10
whole except

No. 17 of 1905.]

[Promulgated 22nd September, 1905.]

†AN ORDINANCE

TO AMEND THE MUNICIPAL STATUTES OF THE COLONY.

Assented to 18th September, 1905.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

PART I.

A.—GENERAL AMENDMENTS OF MUNICIPAL CORPORATIONS ORDINANCES.

Native Location Regulations to apply to locations under control of Council whether laid out by it or not.

Repealed by Act No. 9 of 1912

Power to Council to close locations and remove to another place with approval of Lieutenant-Governor.

‡1. The provisions of section *thirty-seven* of the Municipal Corporations Ordinance 1903 as amended by section *twenty-one* of the Municipal Corporations Amendment Ordinance 1904 shall extend to all locations for natives which are in fact under the control of the Council of a Municipality whether or not any such location was established or laid out by the Council, provided that the Council shall have obtained the approval of the Lieutenant-Governor to the assumption of control over such location and shall have passed a resolution assuming such control. The Native Location Regulations published under Government Notices No. 743 and No. 758 of 1904 shall apply to any locations of which a Council of a Municipality shall have assumed control as aforesaid.

2. (1) The Council may with the approval of the Lieutenant-Governor close any location for natives established or laid out by it or under its control; provided that the Lieutenant-Governor may before giving his approval to the closing of such location require the Council to lay out other land suitable for a location and in manner approved by him to which the inhabitants of the location to be closed may be transported together with any movable erections thereon at the expense of the Council and subject to compensation as prescribed in sub-section (4) of this section.

(2) All Regulations in force in relation to a location closed under this section shall cease to apply to such location, but shall apply to any location substituted under this section until repealed or altered in manner provided by law.

† Provisions of this Ordinance not to apply to Johannesburg. See Ord. No. II (Priv.) of 1906, sec. 95 (4); see also Ord. No. 26 of 1906.

‡ The following native locations were brought under the control of the respective municipalities:—Krugersdorp (Govt. Notice No. 1062 of 1905, *Gazette*, 15/12/05); Klerksdorp, (Govt. Notice No. 17 of 1906, *Gazette*, 5/1/06); Volksrust (Govt. Notice No. 800 of 1907, *Gazette*, 19/7/07); Germiston (Govt. Notice No. 918 of 1907, *Gazette*, 23/8/07); Roodepoort—Maraisburg (Govt. Notice No. 928 of 1907, *Gazette*, 23/8/07); Potchefstroom (Govt. Notices No. 1402 of 1907, *Gazette*, 27/12/07, and No. 373 of 1908, *Gazette*, 16/4/08); Boksburg (Govt. Notice No. 451 of 1908, *Gazette*, 15/5/08); Springs (Govt. Notice No. 610 of 1908, *Gazette*, 3/7/08); Heidelberg (Govt. Notice No. 115 of 1909, *Gazette*, 22/1/09).

(3) A location shall be deemed to be closed under this section from a date mentioned in a notice affixed in conspicuous places upon such location and published once during three consecutive weeks in a newspaper circulating in the municipality.

(4) On the closing of any location under the provisions of this section every lawful holder of a lot therein shall be entitled to compensation for any improvement or erection made or acquired by him on such lot which shall not have been removed by the Local Authority and re-erected for the benefit of such holder in any new location laid down under this section.

Such compensation shall be fixed by agreement between the holder and the Council or failing such agreement shall be assessed by the Magistrate and two arbitrators one of whom shall be appointed by the Council and one by the Commissioner for Native Affairs.

3. Section *forty-two* of the Municipal Corporations Ordinance 1903 as amended by section *twenty-six* of the Municipal Corporations Amendment Ordinance 1904 shall be and is hereby further amended by the addition of the following new sub-sections:

For text see Ordinance 58, 1903, section forty-two (52) (53) (54) (55) (56) (57) (58).

4. (1) The Council shall have power to refuse to grant a licence to carry out any such plumbing or drainlaying work as aforesaid to any person on the following ground in addition to the grounds mentioned in section *sixty* of the Municipal Corporations Ordinance 1903, namely that the applicant is not competent to carry out plumbing or drainlaying work in a proper and workmanlike manner; provided however that the refusal of the Council to grant a licence on the ground herein stated shall be subject to the same appeal as is provided in the said section.

(2) The Council shall also have power to cancel any such licence as aforesaid granted to any plumber or drainlayer if the Council shall be satisfied that such person has done any such plumbing or drainlaying work as aforesaid in a negligent or unworkmanlike manner to the injury of any person or property or contrary to any of the Councils bye-laws; provided that prior to such cancellation the person whose licence it is proposed to cancel shall be given an opportunity of appearing before a committee of the Council and being heard in his own defence.

5. The taxes payable to Councils of Municipalities in respect of erven within municipal boundaries as provided in section *fifty-nine* of the Municipal Corporations Ordinance 1903 and section *twenty-nine* of the Municipal Corporations Amendment Ordinance 1904 shall be deemed to include any taxes in respect of erven which were unpaid and were due to the Colonial Treasury at the date when the Council of the Municipality in which the erven are situate was constituted.

Amendment of section *forty-two* of Ordinance No. 58 of 1903 to enable the Council to make further bye-laws.

Power of Council to refuse and cancel licences

Power of Town Council to collect arrears of erf tax and to remit the same.

Any such taxes may be remitted by the Council to the person liable therefor upon such terms as the Lieutenant-Governor may approve.

Power of Lieutenant-Governor to declare what electoral provisions shall apply to newly constituted Municipalities.

*6. Whenever any Municipality shall be hereafter constituted by the Lieutenant-Governor he may direct by Proclamation in the *Gazette* that the Council of such Municipality shall be elected either in manner prescribed by the Municipalities Elections Ordinance 1903 as amended by the Municipalities Elections Amendment Ordinance 1904 or as prescribed by sections *four* to *twelve* inclusive of the Municipal Corporations Amendment Ordinance 1904 and the provisions of section *sixteen* of the last named Ordinance shall further apply in the case of any Municipality hereafter constituted.

Repeal of section *thirty-four* of Ordinance No. 41 of 1904 and substitution of new provision therefor.

7. Section *thirty-four* of the Municipal Corporations Amendment Ordinance 1904 shall be and is hereby repealed and there shall be substituted therefor the following provision:—

For text see Ordinance 41, 1904, section thirty-four.

PART II.

B.—MISCELLANEOUS.

Application.

8. In this part of the Ordinance the term "Council" shall include the Council of a Municipality constituted under the Municipal Corporations Ordinance 1903 the Municipal Corporations Amendment Ordinance 1904 or under any special law.

Penalty on members and officials for receiving bribes and on persons bribing or attempting to bribe members and officials.

9. (1) Any member officer or servant of the Council or any person carrying out on behalf of the Council any statutory power or duty who whether for himself or for any other person corruptly solicits or receives or agrees to receive from any person any fee advantage or reward whether pecuniary or otherwise as an inducement to or in consideration of or otherwise on account of his doing or forbearing to do anything in respect of any matter or transaction actual or proposed in which the Council is concerned shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding five years and in addition in the case of any such officer or servant to dismissal from office and to forfeiture of any claim to compensation or pension to which he might otherwise have been entitled and every such member aforesaid shall *ipso facto* be disqualified from continuing a member or being elected or appointed to any public office for a period of seven years from the date of such conviction.

(2) Any person who directly or indirectly gives offers or promises to a member officer or servant of the Council or to any person carrying out on behalf of the Council any

* As to Municipality of Witbank see Proc. (Admn.) No. 18 of 1910.

statutory power or duty any fee advantage or reward whether for the benefit of such member officer or servant or of another person as an inducement to or in consideration of or otherwise on account of such member officer or servant doing or forbearing to do anything in respect of any matter or transaction actual or proposed in which the Council is concerned shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding seven years and to a fine not exceeding six hundred pounds and in default of payment of the same to a further term of imprisonment with or without hard labour for a period not exceeding two years.

*10. (1) The Council may with the approval† of the Lieutenant-Governor set apart maintain and carry on bazaars or other areas exclusively for occupation by Asiatics and control and supervise the same in accordance with Regulations made from time to time by the Lieutenant-Governor and may lease the land and any buildings or other erections thereon to Asiatics upon such terms and at such rents as may be prescribed from time to time by such Regulations aforesaid.

Power of Council to set apart bazaars for Asiatics and transfer of existing bazaars.

‡(2) The sites of any bazaars or other places pointed out under the provisions of Law No. 3 of 1885 or any amendment thereof may be transferred by the Lieutenant-Governor to any Council of a Municipality subject to existing leases thereover and every such transfer shall be free of transfer duty stamp duty and registration or other charges and any such bazaar or site so transferred shall be deemed to be a bazaar or area set apart under sub-section (1) of this section.

(3) The provisions of section two of this Ordinance shall *mutatis mutandis* apply for the purpose of enabling a Council to close such bazaars and areas and lay out other land suitable for the same; provided always that in regard to the appointment of arbitrators the Colonial Secretary shall be substituted for the Commissioner for Native Affairs.

11. (1) Whenever it appears to the Council on the certificate of the Medical Officer of Health that any premises are in consequence of defective or unsuitable construction or arrangement bad condition want of light air or ventilation or other sanitary defect liable to retain engender or spread the infection of any disease and that by reason of such liability the occupation of such premises constitutes or would constitute if the same were occupied a grave danger to the public health or to the health of the inhabitants of such premises or of any neighbouring premises the Council may

Power of Council to close premises

* For Asiatic bazaar regulations, see Govt. Notices Nos. 273 of 1907 (*Gazette*, 1/3/07), 1054 of 1908 (*Gazette*, 16/10/08).

† Such approval was given to Boksburg by Govt. Notice No. 450 of 1908 (*Gazette*, 15/5/08); Springs, Govt. Notice No. 693 of 1908 (*Gazette*, 24/7/08).

‡ Control of Asiatic bazaars was transferred to the following municipalities: Pretoria, by Govt. Notice No. 481 of 1907 (*Gazette*, 26/4/07); Barberton, Belfast, Bethal, Ermelo, Klerksdorp, Lydenburg, Middelburg, Nylstroom, Pietersburg, Potchefstroom, Schweizer, Reneke, Vereeniging, and Zeerust, by Govt. Notice No. 482 of 1907 (*Gazette*, 26/4/07); Christiana, Heidelberg, Potgietersrust, Rustenburg, and Wakkerstroom, by Govt. Notice No. 550 of 1907 (*Gazette*, 17/5/07), Standerton and Ventersdorp, by Govt. Notice No. 674 of 1907 (*Gazette*, 21/6/07).

after giving not less than seven days notice in writing of its intention to the owner of such premises and to the occupying tenants (if any) apply to the Court of the Resident Magistrate for an order closing such premises and the Court may upon such application make an order closing such premises and prohibiting the use and occupation thereof until such time as it shall be satisfied that such alterations have been made whether by removal or reconstruction of any building or otherwise as to prevent any such danger as aforesaid resulting from the occupation of such premises and the Court may thereafter on being so satisfied on the application of the owner of such premises withdraw such order as to the whole or any part of such premises provided that before making such application the owner of such premises shall give not less than forty-eight hours notice in writing to the Council of his intention to make the same.

(2) (a) Where a closing order has been made in respect of any premises the Council shall forthwith cause a copy of such order to be affixed in a conspicuous position on such premises.

(b) Any person who shall use or occupy any premises the use and occupation of which have been prohibited by any closing order during the time that such order remains in force shall be liable to a penalty not exceeding ten pounds and to a further penalty not exceeding two pounds for every day during which such use or occupation continues and in default of payment of any such penalty to imprisonment with or without hard labour for a period not exceeding three months; provided however that after the affixing of a copy of such order in the manner aforesaid forty-eight hours grace or such longer time as the Council may determine shall be allowed to any person occupying the premises at the date when the copy of such order was so affixed before such order is enforced against such person.

(3) The Court of the Resident Magistrate of the District may upon application by the Council order the cleansing and disinfecting of any premises in respect of which a closing order has been or may be made under this section and shall by such order specify a time within which such cleansing or disinfecting shall be carried out; and in default of full compliance with any such order the Council may enter upon any such premises and do all things necessary for completely executing the same and may recover the costs and expenses of and incidental to such execution from the person against whom such order has been made by action in a competent Court. Any such order may be made upon the owner or on the occupier of the premises aforesaid.

(4) (a) Any notice required under this section to be given to any person may be served by delivering the same to or at the residence or place of business of the person to whom it is addressed or may be served by post on such person;

(b) when the owner of any premises to whom notice is required to be given under this section does not reside or

carry on business within the Municipality or cannot after reasonable inquiry be found therein such notice shall be deemed to be sufficiently given to such owner if affixed to the premises to which the same relates.

(5) The term "premises" as used in this section means and includes any building room tenement hut shed or van or any yard or other land in connection therewith.

12. This Ordinance may be cited for all purposes as the Title,
Municipal Amending Ordinance 1905.

No. 18 of 1905.]

[Promulgated 22nd September, 1905.]

AN ORDINANCE

TO AMEND THE MEDICAL DENTAL AND PHARMACY
ORDINANCE 1904.

(Assented to 18th September, 1905.)

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:

Amendment
of section
twenty-three
of Ordinance
No. 29 of 1904.

1. Section *twenty-three* of the Medical Dental and Pharmacy Ordinance 1904 shall be and is hereby amended by the insertion therein immediately after the words "in this Colony" of the words "or elsewhere in His Majesty's Dominions".

Amendment
of section
thirty-five of
Ordinance No.
29 of 1904.

2. Section *thirty-five* of the said Ordinance shall be and is hereby amended by the substitution for the word "Council" therein of the words "Colonial Secretary".

Transfer of
articles of
poison from
Part I to
Part II of
Third
Schedule of
Ordinance
No. 29 of 1904
and *vice versa*.

3. The name of any article described as a poison in Part I of the Third Schedule of the said Ordinance or in the said Part I as added to under section *forty-seven* thereof may be transferred to Part II of the said Third Schedule provided the procedure laid down in the said section *forty-seven* be followed; and likewise the names of poisons may be transferred from Part II as added to under the said section to Part I of the said Third Schedule.

Repeal of
section
fifty-one of
Ordinance
No. 29 of 1904
and substitu-
tion of new
provision.

4. Section *fifty-one* of the said Ordinance shall be and is hereby repealed and there shall be substituted therefor the following provision:

For text see Ordinance 29 1904 section fifty-one.

Repeal of
section
fifty-two of
Ordinance
No. 29 of
1904 and
substitution of
new provision.

5. Section *fifty-two* of the said Ordinance shall be and is hereby repealed and there shall be substituted therefor the following provision:

For text see Ordinance 29 1904 section fifty-two.

Amendment
of section
fifty-three of
the said
Ordinance.

6. Section *fifty-three* shall be and is hereby amended by the addition of the words "or other person holding a certificate from the Resident Magistrate as aforesaid" after the expression "general dealer" whenever the same occurs in the said section.

7. Notwithstanding anything in the said Ordinance contained the Resident Magistrate of any district may issue to any person holding a general dealers licence for any premises within his district a certificate authorizing such person to keep for sale and sell any such preparations known as "patent medicines" or "Dutch medicines" which may be *prescribed from time to time by the Lieutenant-Governor and named in a list published in the *Gazette*; provided always that when such medicines contain ingredients deemed to be poisons under the said Ordinance in such quantities as to be dangerous to human life or health if used without due precaution the provisions of sections *forty-eight* and *fifty-three* of the said Ordinance shall apply to the sale thereof; and provided further that in such case all boxes wrappers bottles or packages in which the medicines are sold by retail shall bear a printed label showing the doses in which such medicines are to be administered.

Sale of certain patent medicines by general dealer holding certificates of Magistrate.

8. This Ordinance may be cited for all purposes as the Medical Dental and Pharmacy Amendment Ordinance 1905 and shall be read as one with the Medical Dental and Pharmacy Ordinance 1904.

Title.

* List of "Patent", Proprietary, and "Dutch" Medicines containing poisons within the meaning of sec. 47 of the Medical, Dental, and Pharmacy Ordinance, 1904, prescribed by Govt. Notice No. 105 of 1910 (*Gazette*, 4/2/10).

"Patent" or Proprietary Medicines.—Chlorodyne, Fellows' Syrup (compound syrup of hypophosphites), Easton's Syrup (syrup of phosphates of iron, quinine, and strychnine), Kay's Compound Essence of Linseed, Winslow's Soothing Syrup, Atkinson's Infants Preservative.

Dutch Medicines.—Bloedstillende Drops, Benauwdheid Drops, Endress Drops, Kramp Drops, Kraam Drops, Oog Drops, Pijnstillende Drops, Stuip Drops, Tandpijn Drops, Grauwe Vomities, Witte Vomities, Helmonts Kruiden, Paregoric, Wonder Essens.

Any other patent, proprietary, or Dutch medicine for human consumption not herein named which contains a poison named in the Third Schedule to the Medical, Dental, and Pharmacy Ordinance, 1904.

No. 20 of 1905.]

[Promulgated 22nd September, 1905.]

AN ORDINANCE

TO MAKE PROVISION FOR THE PREVENTION OF CRIME AND FOR OTHER PURPOSES.

Assented to 18th September, 1905.

WHEREAS it is desirable to make provision for the prevention of crime and for the more effectual punishment of habitual criminals;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Special offences by persons twice convicted.

1. (1) Where any person is convicted on indictment of a crime and a previous conviction of a crime is proved against him he shall at any time within five years immediately after the expiration of the sentence passed on him for the last of such crimes be guilty of an offence against this Ordinance and be liable to imprisonment with or without hard labour for a term not exceeding one year under the following circumstances or any of them:

(a) if on his being charged by a constable with getting his livelihood by dishonest means and being brought before a court of summary jurisdiction it appears to such court that there are reasonable grounds for believing that the person so charged is getting his livelihood by dishonest means; or

(b) if he is found in any place whether public or private under such circumstances as to satisfy the court before which he is brought that he was about to commit or to aid in the commission of any offence punishable upon indictment or summary conviction or was waiting for an opportunity to commit or aid in the commission of any offence punishable on indictment or summary conviction; or

(c) if he is found in or upon any dwelling or ground attached thereto or habitually used therewith or in or upon any shop store warehouse office or other place of business or in any garden orchard pleasure or recreation ground nursery or enclosed place without being able to account to the satisfaction of the Court for his being upon any such dwelling or ground or premises.

(2) Any person charged with an offence mentioned in paragraphs (a), (b) and (c) of sub-section (1) of this section may be arrested without warrant by any police constable or officer; provided that if the offence be such as is mentioned in paragraph (a) of sub-section (1) such arrest shall only be made on the written authority of the chief officer of police of the district.

2. Every person being the keeper or occupier of any house or place where intoxicating liquors are sold or of any lodging-house restaurant kaffir eating-house tearoom or place of public entertainment or public resort who harbours persons who he has reasonable grounds for believing obtain their living by the commission of crime or knowingly permits or suffers such persons to meet or assemble therein or allows the deposit of goods therein knowing or having reasonable cause for believing such goods to be stolen or unlawfully possessed or acquired shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment of the same to imprisonment with or without hard labour for a period not exceeding six months and the court before which such conviction shall take place may if it think fit in addition to or in lieu of any such punishment require such person to enter into recognizances with or without sureties to keep the peace and be of good behaviour for a period not exceeding twelve months; provided that

(a) no person shall be imprisoned under this section for a longer period than three months for not finding sureties as required by this section; and

(b) the security required from a surety shall not exceed one hundred pounds;

and any licence for the sale of any intoxicating liquors or for keeping a lodging-house restaurant kaffir eating-house tearoom place of public entertainment or public resort which has been granted to the keeper or occupier of any such house or place as aforesaid may in the discretion of the court be forfeited on his first conviction of an offence under this section and on his second conviction for such offence his licence shall be forfeited and he shall be disqualified for a period of two years from receiving any such licence; and whenever two convictions under this section have taken place within a period of three years in respect of the same premises whether the persons convicted were or were not the same the court shall direct that for a term not exceeding one year from the date of the last of such convictions no licence as aforesaid shall be granted to any person whatever in respect of such premises and any licence granted in contravention of this section shall be void.

Any licensed person brought before the Court in pursuance of this section shall produce his licence for examination and if such licence is forfeited shall deliver it up to the proper authority and if such person shall wilfully neglect or refuse to produce his licence he shall in addition to any other penalty under this section be liable on conviction to a fine not exceeding ten pounds.

3. Any person entering into this Colony after the passing of this Ordinance shall be guilty of an offence against this Ordinance under the following circumstances or any of them:

(a) if he has been convicted whether as principal or accessory elsewhere than in this Colony of the offences following; that is to say of murder rape theft receiving stolen goods knowing the same to have been stolen fraud

Penalty on lodging-house keeper harbouring criminals.

Prohibition of entry into this Colony of persons convicted of certain offences.

forgery uttering of forged documents knowing the same to be forged counterfeiting coin or uttering coin knowing the same to be counterfeit housebreaking with intent to commit an offence burglary robbery with violence threats by letter or otherwise with intent to extort or of any attempt to commit any such offence;

(b) if he has in any country other than this Colony lived on or knowingly received any part of the earnings of prostitution or procured women for immoral purposes;

and may be sentenced to imprisonment without hard labour for a period not exceeding two months pending his removal from this Colony by warrant under the hand of the Lieutenant-Governor.

Power to remove from Colony persons convicted of certain crimes if shown that they were earning a livelihood by dishonest means.

Power of Lieutenant-Governor to remove by warrant persons convicted under sections *three* or *four*.

Penalty for being found in Colony after removal therefrom.

Special jurisdiction of Magistrates.

Regulations for preventing entrance into and removal and custody of persons convicted of certain offences.

4. Any person who

(a) has been convicted of any offences mentioned in paragraph (a) of the last preceding section; and

(b) has prior to the passing of this Ordinance but subsequent to the date of such conviction entered this Colony;

shall be guilty of an offence and shall be liable to be dealt with in manner provided by the last preceding section if it shall be proved to the satisfaction of any Court before which he is brought that there are reasonable grounds for believing he obtains his livelihood by dishonest means.

5. It shall be lawful for the Lieutenant-Governor by warrant to remove from this Colony any person convicted of a contravention of sections *three* or *four* of this Ordinance.

6. If any person who has been lawfully removed from this Colony under the powers of this Ordinance be thereafter found therein he may be arrested without warrant and brought before a Court of Resident Magistrate and shall upon conviction be liable to imprisonment with or without hard labour for a period not exceeding twelve months and at the expiration of such sentence may be again removed from this Colony in manner hereinbefore described.

7. Courts of Resident Magistrate shall have special jurisdiction to impose the maximum penalties prescribed for a contravention of sections *one* and *six* or of any regulations made under section *eight* of this Ordinance.

8. (1) The Lieutenant-Governor may from time to time make alter and repeal regulations for the prevention of the entrance into this Colony and the removal therefrom of any person convicted of a contravention of sections *three* or *four* and may appoint officers to carry out within or outside this Colony any such regulations.

(2) Any such regulations may provide penalties for a contravention thereof not exceeding in any case a fine of one hundred pounds or in default of payment imprisonment with or without hard labour for a period of twelve months or such imprisonment with or without the option of a fine.

*9. (1) The Lieutenant-Governor may from time to time make regulations prohibiting or regulating the possession and sale of dangerous weapons and may in any such regulations declare what shall be deemed a dangerous weapon for the purposes thereof.

Regulations for prohibiting possession of and sale of dangerous weapons.

(2) Any such Regulations may be put into force in any district or in any portion of a district of this Colony.

(3) Penalties may be prescribed by any such Regulations for a contravention thereof not exceeding a fine of fifty pounds or in default of payment imprisonment with or without hard labour for six months or to such imprisonment without the option of a fine.

10. Notwithstanding the provisions of the Law of Evidence Proclamation 1902 any finger print records photographs and documents purporting to be certified under the hand of any police or prison officer of this Colony or elsewhere shall be admissible in evidence before any Court in proof of a previous conviction and shall be *prima facie* evidence of the facts therein set forth; provided that such finger print records photographs and documents shall be produced to such Court by a police officer or prison officer of this Colony having the custody of such finger print records photographs and documents.

Proof of previous convictions.

11. This Ordinance may be cited for all purposes as the Prevention of Crimes Ordinance 1905.

Title.

* For regulations as to possession and sale of dangerous weapons (in force only in Pretoria Municipality and labour districts), see Govt. Notice No. 736 of 1906 (*Gazette*, 20/7/06).

No. 21 of 1905.]

[Promulgated 22nd September, 1905.]

AN ORDINANCE

TO MAKE PROVISION FOR THE APPLICATION OF THE NET PRODUCE ACCRUING TO THE CROWN OF ANY MINE WORKED UNDER THE PRECIOUS STONES ORDINANCE 1903 TO THE REDEMPTION OF THE SELATI RAILWAY DEBENTURES.

Assented to 19th September, 1905.

WHEREAS on the twenty-fifth day of July 1891 the Government of the late South African Republic entered into an agreement with the Franco-Belgian Northern Railway Company of the South African Republic (otherwise known as the Selati Railway Company) whereby it undertook in respect of the issue of debentures by the said company (not exceeding the nominal amount of £1,500,000) to guarantee directly and unconditionally to the holders of such debentures payment of interest at four per cent. per annum and payment of the capital sum secured thereby at par;

And whereas it is expedient that provision be made for the purchase or redemption of the debentures issued in pursuance of such agreement as aforesaid on such terms and conditions as the Lieutenant-Governor may think fit and that the net produce accruing to the Crown from any mine worked under the provisions of the Precious Stones Ordinance 1903 should be made available to meet the expenditure incurred in respect of such purchase or redemption;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

*1. The Lieutenant-Governor shall be and is hereby authorized to purchase or redeem on such terms and conditions as he may think fit from time to time all or any of the debentures issued by the Franco-Belgian Northern Railway Company of the South African Republic (otherwise known as the Selati Railway Company) and guaranteed to the holders by the Government of the late South African Republic and notwithstanding anything in section *seventy-six* of the Precious Stones Ordinance 1903 contained to apply towards the cost of such purchase or redemption any moneys accruing to the Crown in respect of its share of the net produce of any mine worked under the said Ordinance as if such purchase or redemption were the redemption of a loan lawfully raised by the Lieutenant-Governor.

2. This Ordinance may be cited for all purposes as the Selati Railway Debentures Redemption Ordinance 1905.

* See, however, Act No. 18 of 1908, sec. 2.

No. 22 of 1905.]

[Promulgated 22nd September, 1905.]

AN ORDINANCE

TO FACILITATE THE PROCEEDINGS IN THIS COLONY OF THE COMMISSIONERS APPOINTED BY HIS MAJESTY TO HOLD AN INVESTIGATION RESPECTING WAR STORES IN SOUTH AFRICA.

Assented to 19th September, 1905.

WHEREAS a Commission has been issued by His Majesty whereby the Honourable Mr. Justice Farwell the Right Honourable Sir George Taubman-Goldie K.C.M.G. Field Marshal Sir George White G.C.B. Sir Francis Mowatt G.C.B. and Samuel Hope Morley Esquire (hereinafter referred to as "the Commissioners") have been authorised and directed to investigate and report upon the allegations made in the report of the committee presided over by Lieutenant-General Sir W. F. Butler K.C.B. dated 22nd May last; and all the circumstances connected with contracts sales and refunds to or by contractors in South Africa or elsewhere after the conclusion of peace and any previous transactions which may throw light on them; and further to report upon the responsibility of the persons concerned;

And whereas it is desirable to make provision for the more effective conduct by the Commissioners or by any person or persons appointed by them to take evidence in this Colony or any investigation which they may be authorised to make;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. (1) The Commissioners or any person or persons appointed by them to examine witnesses in this Colony shall have all such powers rights and privileges as are vested in the Supreme Court of this Colony or in any Judge thereof on the occasion of any action in respect of the following matters:—

(a) The enforcing of attendance of witnesses and examining them on oath affirmation or otherwise;

(b) the compelling the production of documents; and

(c) the punishing persons guilty of contempt;

and a summons signed by one or more of the Commissioners or by the person or persons appointed by them as aforesaid as the case may be may be substituted for and shall be equivalent to any formal process capable of being issued in any action for enforcing the attendance of witnesses and compelling the production of documents.

(2) A warrant of committal to prison issued for the purpose of enforcing the powers conferred by this section shall be signed by one or more of the Commissioners or by the person

Powers of
Commis-
sioners.

or persons appointed by them as aforesaid and shall specify the prison to which the offender is to be committed but shall not authorise the imprisonment of an offender for a period exceeding three months.

(3) Every person who on examination on oath or affirmation before the Commissioners or before the person or persons appointed by them as aforesaid wilfully gives false evidence shall be liable to the penalties for perjury.

Indemnity to witnesses.

2. (1) A person examined as a witness by the Commissioners or by the person or persons appointed by them as aforesaid shall not be excused from answering any question put to him or from producing any document on the ground that the answer thereto or production thereof may criminate or tend to criminate him.

(2) Every person examined as a witness who in the opinion of the Commissioners or of the person or persons appointed as aforesaid as the case may be makes a full and true disclosure touching all the matters in respect of which he is examined shall be entitled to receive a certificate signed by the Commissioners or by the person or persons appointed as aforesaid as the case may be stating that the witness has on his examination made a full and true disclosure as aforesaid.

(3) If any criminal proceeding (including a proceeding by court-martial) is at any time thereafter instituted against any such witness in respect of any matter touching which he has been so examined the court having cognizance of the case shall on his application and on proof of the certificate stay the proceeding.

(4) Nothing in this section shall apply to the case of proceedings for having given false evidence before the Commissioners or before the person or persons appointed as aforesaid or having procured or attempted or conspired to procure the giving of such evidence.

Title.

3. This Ordinance may be cited as the War Stores (Commission) Ordinance 1905.

No. 23 of 1905.]

[Promulgated 22nd September, 1905.]

*AN ORDINANCE

TO AMEND THE LAW RELATING TO REVENUE LICENCES.

Assented to 19th September, 1905.

WHEREAS it is expedient to amend the law relating to revenue licences to abolish licences for the exercise of professions and to alter the licence duties for the carrying on of certain trades;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. The laws and regulations mentioned in the First Schedule to this Ordinance shall be and are hereby repealed to the extent set forth in the second column of such Schedule but such repeal shall not affect the provisions of section *seventy-two* or any other provisions of the Municipal Corporations Ordinance 1903 as amended by the Municipal Corporations Amendment Ordinance 1904 or the provisions of the Johannesburg Municipal Ordinance 1904.

Repeal of laws.

2. In this Ordinance and the Second Schedule thereto unless inconsistent with the context;

Interpretation of terms.

“agent or representative of a manufacturing or trading establishment carrying on business outside this Colony” shall mean any person who in any way advertises or holds himself out as the authorized representative or agent of such manufacturing or trading establishment outside this Colony and who solicits receives or takes orders for the sale or supply of goods by such manufacturing or trading establishment to persons in this Colony but shall not include a person liable to take out a licence as a general dealer under this Ordinance by whom such goods are resold out of stock;

“agent” or “broker” shall mean any person who undertakes or executes agency or brokerage on commission;

“auctioneer” shall mean any person who undertakes or conducts any sale by public auction other than a person who is exempted from taking out an auctioneer’s licence under Law No. 1 of 1885 or any amendment thereof;

“general dealer” shall mean any person who carries on a trade or business in any shop store or fixed place where goods are sold or offered or exposed for sale;

* See Ord. No. 28 of 1906, sec. 1; as to co-operative agricultural societies see Act No. 17 of 1908, sec. 26, and Act No. 21 of 1909, sec. 6; as to Asiatics see Act No. 36 of 1908, sec. 14 (1) and (2); as to licence in case of transfer of business see Act No. 36 of 1909, sec. 4 (2).

“hawker” shall mean any person who travels with a wagon or other vehicle (other than a handbarrow or hand-cart propelled by himself) or with a pack animal or carrier and who carries goods for sale;

“pawnbroker” shall mean any person who takes or receives goods or articles of value in pledge or security for money lent or advanced;

“pedlar” shall mean any person who travels on foot and without a vehicle (other than a handbarrow or hand-cart propelled by himself) or with a pack animal or carrier and who carries goods for sale.

Saving as to produce raised in Colony.

3. Nothing in this Ordinance contained shall render a person who travels with or without a vehicle to sell produce raised by himself in this Colony liable to take out a licence as a pedlar or a hawker whether for himself or for any person employed on his behalf.

Licences under this Ordinance to entitle holder to carry on business in accordance with law.

4. The grant of a licence under this Ordinance to carry on the business of an auctioneer or of a pawnbroker or to use a boiler shall not entitle the holder thereof to act otherwise than in accordance with any law or statutory regulation for the time being in force relating respectively to auctioneers and pawnbrokers or boilers.

Licence to carry on certain trades and payment of licence duties according to Schedule.

5. (1) Save as in this Ordinance excepted no person shall in this Colony carry on or exercise any trade or business mentioned in Part I of the Second Schedule to this Ordinance or outside the limits of any municipality any trade or occupation mentioned in Part II of the said Schedule unless he shall be in possession of a licence as in this Ordinance provided.

(2) The licence duties set forth in the said Second Schedule shall become chargeable as therein provided and such Schedule shall be deemed to be part of this Ordinance.

(3) Any person who in contravention of this section shall carry on any trade or business without being in possession of such licence as is herein prescribed shall be liable on conviction to a fine not exceeding five times the amount of the annual licence duty payable in respect of such trade or business and in default of payment to imprisonment with or without hard labour for a period not exceeding six months or to both such fine and such imprisonment.

(4) For the purposes of this Ordinance the use of a boiler shall be deemed to be the carrying on of a trade or business.

Period of licences under this Ordinance and period of grace for renewals.

6. (1) All licences under this Ordinance shall be issued by the revenue officer of the district in which the same are required and for the periods shown against the respective licences mentioned in the Second Schedule to this Ordinance;

(a) when issued for one year or for any period longer than half a year expiring on the thirty-first day of December then next;

(b) when issued for half a year or for any shorter period expiring if issued before the thirtieth day of June on that day and if issued after the thirtieth day of June expiring on the thirty-first day of December then next.

(2) No prosecution shall be instituted for a contravention of the last preceding section unless the person to whom the licence was issued fails to renew the same after a period of one month from the date of the expiration thereof; and if such person shall desire to renew such licence after such period of one month he shall upon such renewal pay for every month or part of a month during which he shall have been carrying on a trade or business without the prescribed licence a sum calculated at the rate of ten per centum on the annual licence duty payable in respect of such trade or business in addition to the licence duty for the period for which he may desire to renew his licence.

7. (1) Where the liability to take out a licence under this Ordinance commences other than at the beginning of a year or of a half-year duty shall be payable in respect of the first licence according to the proportionate period of the year or half-year (as the case may be) reckoned from the first day of the month in which the trade or business is commenced to be carried on; provided that such licence shall be deemed of effect only from the date of issue thereof.

Basis of assessment of licences issued not at the commencement of a year or half year.

(2) *Repealed by Act No. 15, 1909, section one (2).*

(3) *Repealed by Act No. 15, 1909, section one (2).*

8. *Repealed by Act No. 15, 1909, section one (2).*

Declaration by general dealers for purposes of a licence.

9. In any prosecution for carrying on without a licence a trade or business for which a licence under this Ordinance is required it shall be prima facie evidence that such trade or business has been carried on if

Evidence.

(a) an advertisement has appeared in any newspaper circulating in the Colony from which it can be reasonably inferred that the accused is offering to carry on such trade or business;

(b) the accused holds himself out by notice exhibited at or near any premises occupied by him or by notices whether printed or otherwise which are distributed amongst the public as carrying on such trade or business;

(c) the accused offers or exposes for sale any goods usually sold in the course of such trade or business.

10. *Repealed by Act No. 15, 1909, section one (2).*

Transfer of licences and renewal of licensed business and other premises.

11. (1) No licence to carry on the business of a hawker or pedlar shall be issued to any person except upon production of a certificate by a magistrate justice of the peace or police officer stating that the applicant is a fit and proper person to be so licensed; provided always that any person holding a licence as hawker or pedlar may be granted a fresh licence under this

Conditions of grant of licence as hawker or pedlar.

sub-section without production of such certificate if the previous licence be produced and delivered up to the district revenue officer within fourteen days after the date of the expiration thereof and if no objection as to the fitness of the applicant to be licensed has been received from any person qualified under this sub-section to give a certificate of fitness.

(2) It shall be lawful for any police constable or police officer to demand from any person travelling as or carrying on the trade of a hawker or pedlar the production of his current licence and on failure to produce such licence to arrest without warrant and take such person with his goods before any magistrate having jurisdiction upon a charge either of trading without the licence required by this Ordinance or of failing to produce such licence.

(3) It shall be lawful for any magistrate before whom a hawker or pedlar is convicted for a breach of the laws relating to licensing to cancel such licence and the said licence shall thereupon be forfeited.

(4) Every licensed hawker or licensed pedlar shall cause to be painted in clear and legible letters on the most conspicuous part of every conveyance used in his trade his name and address (if any) with the words "licensed hawker" or "licensed pedlar" as the case may be and for non-compliance with this sub-section he shall be liable to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding seven days.

Conditions
of application
for and grant
of boiler
licences.

12. (1) Every person applying for a boiler licence shall furnish in writing the following particulars:—

- (a) the full name and postal address of the intending user;
- (b) the registered number of each boiler for which a licence is necessary under this Ordinance and the place where the boiler is to be used;
- (c) any other particulars for identification which may be required by any regulations for the time being in force made under any law for regulating the use of machinery.

(2) Notification shall be sent by the revenue officer to the Chief Inspector of Machinery of every boiler licence issued by him and the particulars aforesaid shall be set out in such notification.

(3) No boiler licence under this Ordinance shall be deemed to authorise the use of any boiler unless such use is authorised under the Machinery Regulations aforesaid.

(4) *Repealed by Act No. 15, 1909, section one (2).*

(5) *Repealed by Act No. 15, 1909, section one (2).*

(6) Nothing in this Ordinance contained shall render any boiler used by a department of the Public Service or the Railway Administration liable to licence duty.

Banking
company's
licence.

13. (1) Every company carrying on the business of banking in this Colony shall take out a yearly licence authorizing the carrying on of such business at the head or principal office and at every branch office in this Colony.

(2) Every such licence shall be taken out at the office of the district revenue officer of the district in which the head or principal office of such company is situate.

(3) Every person applying for such licence shall upon application lodge with the district revenue officer aforesaid a certified statement signed by the chairman manager or responsible officer in this Colony showing the paid-up capital of such company.

14. Any district revenue officer inspector of revenue licences police constable or police officer may enter upon any premises at all reasonable hours upon which any trade or business liable to licence duty under this Ordinance is being carried on or is suspected of being carried on and require the occupier of such premises to produce for purposes of inspection any licence issued under this Ordinance and any such occupier who shall refuse or fail to produce his licence upon such requirement shall be liable on conviction to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding fourteen days.

Powers of revenue and police officials.

15. In case any contravention of the provisions of this Ordinance is committed by a company firm or partnership the managing director or person having the management or control of the business in the case of a company or firm and each partner in the case of a partnership shall be responsible therefor and shall be liable to the penalty provided for such contravention.

Responsibility for contravention of Ordinance by companies firms and partnerships.

16. This Ordinance may be cited for all purposes as the Revenue Licences Ordinance 1905 and shall come into operation on the first day of January 1906.

Title.

FIRST SCHEDULE.

<i>Laws Repealed.</i>	<i>Extent of Repeal.</i>
Law No. 13 of 1894	Article one.
Law No. 19 of 1896	The whole.
Law No. 20 of 1896	The whole.
Law No. 17 of 1899	The whole.
Ordinance No. 50 of 1902	The whole.
Machinery Regulations of 1903	Section VI Article 43 relating to Boiler Licences.

SECOND SCHEDULE.*

LICENCE DUTIES PAYABLE UNDER THIS ORDINANCE.

* For licence duties see now Act No. 15 of 1909, Second Schedule.

No. 24 of 1905.]

[Promulgated 22nd September, 1905.]

AN ORDINANCE

TO ENABLE CERTAIN LANDS TO BE CONVEYED TO THE
MUNICIPALITY OF JOHANNESBURG.

Assented to 19th September, 1905.

WHEREAS certain lands in the area which is now the Municipality of Johannesburg were set apart by the Government of the late South African Republic for the purpose of cemeteries and locations for natives and Asiatics and for other local purposes;

And whereas the Lieutenant-Governor in 1903 appointed a Commission to enquire into matters affecting Crown lands within the said municipality and it is desirable to give effect to the report of such Commission;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Power to
Lieutenant-
Governor to
grant certain
lands to the
Johannes-
burg Muni-
cipality.

1. It shall be lawful for the Lieutenant-Governor to grant to the Council of the Municipality of Johannesburg in such manner and on such conditions as he may deem advisable and subject to all servitudes rights and interests at present subsisting therein in favour of any person the land described in the Schedule hereto and shown on the plans signed by Adam Jameson Commissioner of Lands and George Goch Mayor of Johannesburg dated twenty-sixth August 1905 and deposited at the office of the Surveyor-General.

Recreation
grounds.

2. All such lands as are described in Part II of the said Schedule shall except with the consent of the Lieutenant-Governor for ever remain dedicated for purposes of or incidental to the recreation and amusement of the inhabitants of the Municipality.

Exemption
from pay-
ment of
transfer
duty.

3. No transfer duty stamp duty or any registration or other charges shall be payable on the transfer of any lands to the said Council under the provisions of this Ordinance; nor in respect of the lands described in Part III of the Schedule hereto which are to be acquired by the Council from the Railway Administration in exchange for certain other lands belonging to the said Council.

Title.

4. This Ordinance may be cited for all purposes as the Johannesburg Lands Ordinance 1905.

SCHEDULE.

PART I.

1. Portion of the farm "Braamfontein" No. 127 Witwatersrand containing an approximate area of 27½ morgen and more particularly known as the Johannesburg Cemetery.

2. Portion of the farm "Braamfontein" No. 127 Witwatersrand containing an approximate area of 86 morgen and more particularly known as the Coolie, Malay, and Kaffir Locations.

3. Portion of the farm "Braamfontein" No. 127 Witwatersrand containing an area of 72 morgen 68 square roods being the Crown Land dealt with under the provisions of the Johannesburg Insanitary Area Expropriation Ordinance 1903.

PART II.

4. Portions of the farm "Rantjeslaagte" No. 138 and of "Braamfontein" No. 127 Witwatersrand containing an area of 16½ morgen and more particularly known as the Wanderers' Ground.

5. Portion of the farm "Braamfontein" No. 127 Witwatersrand containing an area of 134 morgen 464 square roods more or less and more particularly known as Milner Park.

6. Portion of the farm "Rantjeslaagte" No. 138 containing an area of 8 morgen 253 square roods 18 square feet and more particularly known as Joubert Park.

7. Portion of the farm "Rantjeslaagte" No. 138 Witwatersrand containing an area of 2 morgen 431 square roods 136 square feet and more particularly known as Cosmopolitan or Union Square.

8. If and so far as the Lieutenant-Governor shall not reserve the same for public purposes a portion of the farm "Braamfontein" No. 127 Witwatersrand known as the Agricultural Show Ground containing an area of 26 morgen 58 square roods and a further portion of the said farm immediately adjoining the ground aforesaid on the Eastern boundary and situated North of Hoofd Street.

PART III.

Certain portions of that portion of the farm Braamfontein No. 127 and the farm Rantjeslaagte No. 138 District Witwatersrand known as Railway Ground as shown on the General Plan filed in the Surveyor-General's Office and marked as follows:—

Portion 1 lettered A B C D situated to the north of Carr Street.

Portion 2 lettered F G H I J K L situated south of northern boundary of Bree Street continued through the Railway Ground.

Portion 3 lettered Y Z A situated to the east of Graaf Street and south of Smit Street.

Portion 4 lettered V W X situated to the west and opposite the southern extremity of de Beer Street.

Portion 5 lettered G M N O P Q adjoining Bree and Diagonal Streets.

Portion 6 lettered R S T U situated to the west of and adjoining Harrison Street.

The portions marked 1 2 3 and 4 being situated on the farm Braamfontein No. 127 and portions 5 and 6 on the farm Rantjeslaagte No. 138 District Witwatersrand.

No. 25 of 1905.] [Promulgated 22nd September, 1905.]

AN ORDINANCE

TO GRANT CERTAIN RIGHTS AND POWERS TO THE PREMIER
(TRANSVAAL) DIAMOND MINING COMPANY LIMITED TO USE
AND CONVEY WATER ACROSS CERTAIN LANDS.

Assented to 19th September, 1905.

WHEREAS it is expedient and necessary that certain rights and powers should be granted to and vested in the Premier (Transvaal) Diamond Mining Company Limited to facilitate the working and exploitation of the diamond mine situate upon the farm Elandsfontein No. 85 in the District of Pretoria;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Company to have right to divert flood water in Wilge River and convey it to the Premier Diamond Mine; provision as to normal flow.

1. (1) Anything to the contrary contained in the common law or in Law No. 11 of 1894 or in any other law notwithstanding it shall be lawful for the said company to take impound divert and use from the Wilge River on those portions of the farm Spitzkop No. 31 and Zuikerboschfontein No. 325 situate in the district of Pretoria the property of the said Company and to convey thence across and over the remaining portion of the said farm Spitzkop and the farms Wachteenbeetjeskop No. 410 Roodepoort No. 474, Rustfontein No. 401 Rietfontein No. 114 Zonkolol No. 214 Hartebeestfontein No. 210 Zonderwater No. 173 and Tweefontein No. 232 to the said farm Elandsfontein No. 85 such a supply of storm or flood water in the said river as it may require for the purpose of working and exploiting its diamond mine aforesaid and to do and perform all other acts matters and things which may be from time to time necessary for carrying out the works contemplated by this Ordinance; provided always that pending the construction of the necessary works for impounding such storm or flood water and for a period not exceeding two years from the taking effect of this Ordinance it shall be lawful for the Company to divert use and convey so much of the normal flow of water in the said river as is sufficient for its aforesaid purposes; and provided further that the Lieutenant-Governor shall on his being satisfied that the diversion of the normal flow of water in the said river is causing damage to any person lawfully entitled to the use thereof order the said Company to allow a sufficient quantity of water to flow down to satisfy the lawful requirements of such person as aforesaid and the Company shall pay compensation to such person for any damage he may have sustained by reason of such diversion as aforesaid and the amount of

such compensation in the absence of any agreement between the parties affected thereby shall be determined by arbitration under the provisions of the Arbitration Ordinance 1904.

(2) In case the said Company disobey the order of the Lieutenant-Governor mentioned in the proviso of the last preceding sub-section it shall be liable to a fine of one hundred pounds for every day such order is disobeyed and such fine shall be a debt due to the Colonial Treasury and may be recovered by action at the suit of the Colonial Treasurer.

2. It shall and may be lawful for the said Company and it is hereby authorized to enter upon the said farms in section *one* hereof mentioned and lay down and maintain thereon such pipes as may be necessary for the purpose of conveying the said water across the said farms to the said mine; and also alongside such pipes wires for telegraphic communication and transmission of electrical power between the farm Spitzkop and the said mine.

Company authorized to enter on private land for laying its pipes for conveyance of water.

3. The said Company shall give notice in writing to the person owning or occupying the portions of the said farms over which the said Company intends to lay down the said pipes and wires describing in the said notice the line of passage along which it is desired to lay the said pipes and wires and if the said person shall not within one month from the date of such notice agree as to the line of passage or the compensation to be paid in respect thereof the said Company may by another notice call upon him to refer to arbitration all the several matters in dispute between them under the provisions of the Arbitration Ordinance 1904.

Company to give notice to owners of land across which it proposes to lay pipes; reference to arbitration in case of dispute.

4. The arbitrators appointed under the last preceding section shall have power to do any of the following things:—

Power of arbitrators.

(a) To give the said Company claiming the right aforesaid the line of passage chosen or such other line as may be deemed most beneficial to such Company and as little injurious as possible to the other party.

(b) To specify the manner in which the water shall be conveyed.

(c) At the request of the other party to award the amount of compensation to be paid for the possession and exercise of the right of passage of water either in one sum or in different sums at different times or by way of annual rent.

(d) In case the land over which the right of passage is claimed shall be under lease to determine the amount of compensation to be paid to the lessee for any injury which such lessee may sustain by reason of the exercise of such right and such compensation may be awarded whether such lessee shall or shall not be a party to the arbitration if in the course of proceedings under the reference such lessee shall claim compensation.

5. In the exercise of the rights and powers mentioned in the preceding sections the Company shall do as little damage as can be.

Company to cause as little damage as possible. Title.

6. This Ordinance may be cited as the Premier (Transvaal) Diamond Mining Company Water Ordinance 1905.

By Ord 9 of 1905 Sec 9

No. 26 of 1905.] [Promulgated 22nd September, 1905.]

AN ORDINANCE

TO FURTHER AMEND THE MUNICIPALITIES ELECTIONS
ORDINANCE 1903.

Assented to 19th September, 1905.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Interpreta-
tion of terms.

1. In this Ordinance the term "principal law" shall mean the Municipalities Elections Ordinance 1903 as amended by the Municipalities Elections Amendment Ordinance 1904 and the term "Municipality" shall mean a Municipality the Council of which is required to be elected in accordance with the provisions of the principal law and the term "Council" shall mean a Council so elected.

Repeal of
section
sixteen of
Ordinance
No. 38 of
1903 and
substitution
of new pro-
visions.

*2. (1) Section *sixteen* of the principal law shall be and is hereby repealed; provided that such repeal shall not affect the continued existence of any proclamation issued thereunder and in force at the date of this Ordinance.

(2) Every Municipality shall be divided into wards and whenever it shall become necessary to divide into wards a Municipality which is not already so divided the Lieutenant-Governor may appoint a commission of one or more persons to prepare a scheme for determining the boundaries of such wards and notice of the sitting of such commission shall be published in the *Gazette* and in a newspaper circulating in such Municipality.

(3) Every such scheme shall be published by the Colonial Secretary in the *Gazette* and in a newspaper circulating in the Municipality once a week during three consecutive weeks and when approved by the Lieutenant-Governor with or without modification shall come into operation from a date to be notified by proclamation under this section.

(4) Whenever a Municipality has been divided into wards such wards may be increased in number or the boundaries of existing wards may be from time to time altered upon petition presented to the Lieutenant-Governor after a resolution of the Council of such Municipality passed at a special meeting called for the purpose and whenever the Council shall petition for any such increase or alteration of wards it shall with its petition transmit to the Lieutenant-Governor proposals for any apportionment of the existing councillors rendered necessary by such increase or alteration. Every such petition

* This section does no longer apply to the Municipalities of Pretoria and Johannesburg; see Act No. 23 of 1909, sec. 2 (1).

for an increase or alteration of wards with any proposals for apportionment of councillors may be approved by the Lieutenant-Governor with or without modifications and subject to the provisions of sub-section (6) shall take effect when so approved from a date to be notified by proclamation under this section and from such date every councillor then in office shall hold office for the ward assigned to him for the remainder of the period for which he was elected.

(5) Notwithstanding anything in this section contained the Lieutenant-Governor whenever he shall exercise the powers conferred upon him by any law of altering the boundaries of a Municipality or adjusting the boundaries of adjoining Municipalities may as consequential upon such alteration or adjustment increase the number of wards or alter and adjust the boundaries thereof or may make both such increase and alteration or adjustment and may subject to the provisions of sub-section (6) apportion the councillors representing any wards so altered or adjusted among such wards; provided that no such alteration or adjustment of wards or apportionment of councillors shall take effect except upon a scheme prepared and published as in sub-sections (2) and (3) is provided.

(6) If the number of wards into which the Municipality is divided is increased and if on such increase the boundaries of the wards are altered then on the occasion of every such increase and alteration the Lieutenant-Governor may by proclamation in the *Gazette* declare which wards shall be deemed to be new wards within the meaning of section *twenty-two* of the principal law and the councillors holding office at the date of such increase and alteration shall be apportioned among the altered wards (not being new wards) in accordance with the provisions of sub-section (4) or sub-section (5) as the case may require; provided always that the period for which any councillor holds office shall not be affected by such apportionment.

(7) At the first election of councillors for any ward which is or has been declared to be a new ward three councillors shall be elected for such ward. One of such councillors (being the one who stands first on the poll) shall continue in office until the day of the third annual election next ensuing and no longer and one of such councillors (being the one who stands second on the poll) shall continue in office until the day of the second annual election next ensuing and no longer and the remaining councillor (being the one who stands third on the poll) shall continue in office until the day of the first annual election next ensuing and no longer; and in case there are two or more candidates who have received an equal number of votes at the said poll or in case there is no poll the returning officer shall determine by lot which of the candidates shall be elected for a period terminating on the day of the first second or third of such annual elections respectively. For the purpose of this sub-section the last Wednesday in October shall be the day of the annual election.

(8) Every division of a municipality into wards and every alteration or adjustment of the boundaries of such wards and every increase in the number of wards under the powers of this section shall be notified by proclamation of the Lieutenant-Governor in the *Gazette*.

(9) The powers jurisdiction and privileges of the Commissions Powers Ordinance 1902 shall apply *mutatis mutandis* to any commission appointed under this section.

Repeal of Chapter VII of Ordinance No. 38 of 1903 and enactment of transitory provisions applicable to Johannesburg Municipality.

3.* Chapter VII of the principal law containing provisions specially applicable to the Municipality of Johannesburg shall be and is hereby repealed and all the sections of the principal law from the application of which such municipality was excluded by the said Chapter shall as hereby amended apply thereto subject to the following transitory provisions that is to say:

(a) it shall not be necessary to prepare and publish a scheme with reference to such municipality in accordance with sub-sections (2) and (3) of section *two* of this Ordinance but the districts into which such municipality has been divided by Proclamation No. 79 (Administration) of 1905 (which Proclamation shall be deemed to be valid) shall on the date of the passing of this Ordinance *ipso facto* become wards of such municipality and the voters roll prepared or settled under Chapter IV of the principal law for the said districts whether the same are referred to in such roll as districts or wards shall be deemed to be the voters roll prepared or settled for the said districts when the same have become wards as aforesaid; provided however that nothing herein contained shall affect the power of the Lieutenant-Governor thereafter to make any alteration of any of the wards of such municipality or to increase the number of them subject to the provisions of this Ordinance;

(b) the wards referred to in the preceding sub-section shall not be deemed to be new wards within the meaning of the principal law as hereby amended but the councillors holding office at the date of the passing of this Ordinance shall be apportioned among the said wards and any vacancies in the Council existing at such date shall also be apportioned among the said wards. Every councillor so apportioned shall hold office for the ward assigned to him for the remainder of the period for which he was elected and every vacancy so apportioned shall be filled subject to the provisions of the principal law as hereby amended as if the councillor whose seat has become vacant had been a councillor representing the ward to which such vacancy is apportioned. The Lieutenant-Governor shall appoint a commission of one or more persons to prepare a scheme of such apportionment and may approve such scheme with or without modifications and such scheme when approved shall be published in the *Gazette* and shall be deemed to have taken effect as from the date of the

* This section does no longer apply to the Municipalities of Pretoria and Johannesburg; see Act No. 23 of 1909, sec. 2 (1).

passing of this Ordinance. Such scheme shall be framed in such a manner as to secure that when all vacancies are filled there will be three councillors for each ward whose periods of office will expire in successive years;

(c) no special election to fill any casual vacancy shall be held prior to the annual election held in the year 1905 unless the casual vacancies shall exceed six in number.

4.* Section *twenty-nine* of the principal law shall be and is hereby amended by the omission therefrom of the words "the resident magistrate or" and the substitution of the words "the town clerk or if there be none".

Amendment of section *twenty-nine* of Ordinance No. 38 of 1903.

5.* Where any councillor shall have vacated his seat prior to the expiration of his period of office and such vacancy is not filled under the provisions of the principal law as hereby amended prior to the date when such councillor would in the ordinary course have retired such vacancy shall be deemed not to be a casual vacancy but to be a vacancy caused by the retirement of such councillor due to the expiration of the period for which he was elected.

When vacancy caused by councillor vacating his seat prior to expiration of period of office is to be deemed not to be a casual vacancy.

6. Section *thirty-two* of the principal law shall be and is hereby amended by the omission therefrom of the words "to receive nominations shall" (on the day after the nomination day) inform the returning officer by this Ordinance appointed of the necessity of an election being held and such returning officer" and the substitution therefor of the words "to be returning officer as aforesaid".

Amendment of section *thirty-two* of Ordinance No. 38 of 1903.

7. The occurrence of any casual vacancy in the Council which is not required to be declared by the Mayor at a meeting of the Council under the provisions of section *seven* of the principal law shall be notified without delay by the town clerk by a notice signed by him and affixed in a conspicuous position in the municipal offices and any casual vacancy shall for the purposes of the principal law as hereby amended be deemed to occur at the date when such vacancy is declared by the Mayor under the said section *seven* or notified by the town clerk under this section.

Notification of vacation of office by councillor.

8.† Notwithstanding anything in section *twenty-eight* of the principal law no casual vacancy shall be filled at any annual election which has not occurred prior to the first publication of the notice mentioned in section *thirty* of the principal law.

Casual vacancies not to be filled at annual election unless occurring prior to first publication of notice.

9.† (1) At the first meeting of the Council held after every annual election of councillors the councillors present

Deputy Mayor.

* These sections do no longer apply to the Municipalities of Pretoria and Johannesburg; see Act No. 23 of 1909, sec. 2 (1).

† Sec. 8 and sub-sec. 9 (1) do no longer apply to the Municipalities of Pretoria and Johannesburg; see Act No. 23 of 1909, sec. 2 (1).

shall elect one councillor to be Deputy Mayor who shall continue in his office until his successor shall be appointed after the next ensuing annual election of councillors unless his office be sooner vacated and in case of such vacancy then a successor shall at the meeting next but one of the Council after such vacancy be chosen by the councillors from amongst themselves who shall serve as Deputy Mayor for the remainder of the period for which the vacating Deputy Mayor was elected; provided always that should a Deputy Mayor for any reason not be elected at a meeting as herein prescribed he may be elected at the first ordinary meeting of the Council held thereafter or at a special meeting called for the purpose.

(2) The Deputy Mayor shall whenever it shall be necessary owing to the death resignation absence illness or incapacity of the Mayor do all acts which the Mayor as such may do. The fact of the death resignation absence illness or incapacity of the Mayor shall be notified by the town clerk or his deputy to the first meeting of the Council held after such death resignation absence illness or incapacity has happened or commenced and be recorded in the Councils minutes. Such record shall be sufficient authority for all acts done by the Deputy Mayor which the Mayor as such may do from the date of the death or resignation or the commencement of the absence illness or incapacity of the Mayor until a new Mayor shall be appointed or the Mayor shall resume his duties.

(3) Section *fifteen* of the Municipal Corporations Ordinance 1903 section *eight* of the Johannesburg Municipal Proclamation 1901 and all the provisions relating to the Deputy Chairman of the Municipality of Johannesburg contained in any law shall be and are hereby repealed.

(4) At every meeting of the Council the Mayor if present shall preside and in case of his absence the Deputy Mayor and in case neither the Mayor nor the Deputy Mayor shall be present at any meeting then the councillors present shall elect a chairman from among themselves who shall in the absence of the Mayor and Deputy Mayor preside at such meeting and if it shall appear to the Council at such meeting that the Mayor and Deputy Mayor are both absent from the municipality or are for any other reason incapable of acting the Council may by resolution confer on the chairman elected as aforesaid full authority to do all acts which the Mayor as such may do until either the Mayor or Deputy Mayor is again able to act.

(5) The Deputy Mayor of Johannesburg who shall be in office at the date of the passing of this Ordinance shall continue in office until his successor shall be appointed in accordance with sub-section (1) of this section.

10. Section *forty-three* of the principal law shall be and is hereby amended by the insertion of the words "who is unable to read or" immediately after the word "voter" where such word first occurs in the said section.

Amendment
to section
forty-three of
Ordinance
No. 38 of
1903.

11. Sub-section (10) of section *seventy-two* of the principal law shall be and is hereby amended by the addition thereto of the following provision "save in such parts of licensed premises as are by the proviso to section *eighty-four* exempted from the operation of the said section".

Amendment of sub-section (10) of section *seventy-two* of Ordinance No. 38 of 1903.

12. Section *eighty-five* of the principal law shall be and is hereby amended by the omission therefrom of the words "making use of his own conveyance or".

Amendment of section *eighty-five* of Ordinance No. 38 of 1903.

13. If in connection with the division of any municipality into wards or the alteration of the boundaries of the wards of any municipality or the increase in the number of them or the apportionment of councillors among wards any matter shall arise for which the principal law as hereby amended does not sufficiently provide the Lieutenant-Governor may order all such steps to be taken with regard to the election of councillors or otherwise as may be necessary to meet the circumstances of the case and may fix the period for which any councillor to be elected for any ward is to hold office so that the general intent and purpose of the principal law as hereby amended may have effect.

Power of Lieutenant-Governor to order steps to be taken where matters unprovided for.

14. This Ordinance may be cited for all purposes as the Municipalities Elections Amendment Ordinance 1905 and shall be read as one with the principal law and any law amending the same.

Title.

No. 27 of 1905.] [Promulgated 22nd September, 1905.]

*AN ORDINANCE

TO AMEND THE LABOUR IMPORTATION ORDINANCE 1904.

Assented to 19th September, 1905.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Jurisdiction conferred on superintendent and inspectors of labourers appointed under Ordinance No. 17 of 1904 to try certain offences.

1. (1) The superintendent and every inspector appointed under the provisions of the Labour Importation Ordinance 1904 (hereinafter referred to as the said Ordinance) shall have jurisdiction to try offences committed by a labourer within the Witwatersrand District against the said Ordinance or any Regulation made thereunder and shall also have jurisdiction to try any offence summarily triable by a court of resident magistrate committed by a labourer on the premises on which he is employed and may hold a court for such purposes at any mine where labourers are employed or at such other place as the Lieutenant-Governor may appoint.†

(2) Upon a conviction of such labourer for any such offence the superintendent or inspector aforesaid may impose such sentence as Courts of Resident Magistrate may under any law now or hereafter in force impose for the same.

(3) *Repealed by Ordinance No. 12, 1906, section two.*

Procedure upon trials under this Ordinance.

2. (1) For the purposes of the exercise of jurisdiction conferred upon the superintendent and the inspectors aforesaid such officers may summon as a witness any person in manner prescribed by regulations under this Ordinance and every person on whom such summons has been duly served who neglects or refuses without reasonable cause to attend at the time and place mentioned in such summons shall be liable on conviction by a Court of Resident Magistrate to a fine not exceeding ten pounds and in default of payment to imprisonment for a period not exceeding one month.

(2) All evidence at any trial under the provisions of this Ordinance shall be given upon oath or solemn affirmation and the superintendent and every inspector exercising the jurisdiction hereby conferred may administer an oath to every witness thereon and any person who shall give false evidence material to the issue on such trial shall be deemed to be guilty of perjury.

(3) At every such trial aforesaid the superintendent or inspector (as the case may be) shall take down the evidence and

* See Act No. 19 of 1907.

† As to places of trial see Govt. Notice No. 901 of 1905 (*Gazette*, 13/10/05).

record his finding and sentence in writing and in any other matter of procedure not specifically provided for in this Ordinance the provisions of the Magistrates Courts Proclamation 1902 and any amendment thereof and any rules made thereunder shall as far as the same are applicable be observed.

(4) The records of all cases tried under the powers of this Ordinance shall be in the English language and save when the same are transmitted for purposes of review or appeal under section *four* shall be kept at the office of the superintendent.

3. Whenever a sentence of imprisonment is imposed under the jurisdiction conferred by this Ordinance the superintendent or inspector (as the case may be) shall issue under his hand a warrant stating the name and passport number of the prisoner and the particulars of the sentence imposed and it shall be the duty of the keeper of every prison to receive the person named in the warrant into custody and to carry out the terms thereof save in so far as the same may be modified on review or appeal under section *four*.

Warrant of imprisonment.

4. (1) All sentences imposed by a superintendent or inspector under the provisions of section *one* of this Ordinance shall be subject to review by or appeal to the Supreme Court in the same manner and under the same conditions as sentences imposed by a Court of Resident Magistrate are by law subject to review or appeal and the provisions of sections *thirty-nine* to *forty-two* inclusive of the Magistrates Courts Proclamation 1902 as amended from time to time shall *mutatis mutandis* apply in the case of such review or appeal.

Review by and appeal to Supreme Court in respect of sentences by superintendent and inspector.

(2) It shall be the duty of the superintendent or inspector as the case may be after the imposition of any sentence of imprisonment which is not subject to review by the Supreme Court to forthwith transmit the records to the Attorney-General who may on consideration of such records confirm set aside alter or reduce any such sentence as justice may require and may correct the proceedings in the case and when it shall appear necessary or proper may remit such proceedings to the superintendent or inspector who tried such case with such instructions relative to further proceedings as he may think fit to give.

5. It shall be the duty of every such employer of labourers as aforesaid to provide upon the mine a secure lock-up approved by the superintendent in which labourers arrested for any offence triable under this Ordinance may be confined until trial and every such lock-up shall for the purposes of article *fourteen* of Law No. 14 of 1880 be deemed to be a gaol.

Provision of lock-up on mines by employer.

6. *Repealed by Ordinance No. 12, 1906, section two.*

Power of superintendent to impose a collective fine.

7. The superintendent may with the consent of the importer or in case the importer does not consent on the direction of the Lieutenant-Governor after hearing both the superintendent and the importer order the return to the country of origin and may cancel the contract of employment

Power of superintendent to return dangerous labourers to country of origin.

and take all necessary steps for such return at the expense of the importer of any labourer who he has reasonable grounds for believing is a danger to the exercise of the proper control of labourers on any mine and in the exercise of the powers of this section the provisions of section *twenty-eight* sub-sections (4) and (5) of section *twenty-nine* and sub-section (2) of section *thirty-three* of the said Ordinance shall apply.

8. Section *thirty-one* of the said Ordinance shall be and is hereby amended by the addition thereto of the following sub-sections:—

(15) *Repealed by Ordinance No. 25, 1906, section one.*

(16) *Repealed by Ordinance No. 25, 1906, section one.*

(17) *For text, see Ordinance No. 17, 1904, section thirty-one (17).*

9. Whenever an offence is alleged to have been committed under the said Ordinance or any regulations thereunder by an importer or employer and such importer or employer is a company any secretary manager or director of such company who is resident within this Colony shall be deemed to be an importer or employer for purposes of or connected with criminal proceedings for such alleged offence.

*10. It shall be lawful for any private white person to arrest without warrant any labourer found outside the Witwatersrand District and it shall be the duty of the person making such arrest to deliver over such labourer to the police authorities at the nearest police station.

The person making such arrest and delivering over the person arrested at such police station as aforesaid shall be entitled to be paid by the officer in charge thereof for loss of time and reasonable expenses incurred in connection with such arrest and such payment shall be made according to a tariff framed by the Attorney-General.

11. Any importer may make rules with the approval of the superintendent for the proper observance by labourers of sanitary precautions. Such rules when approved by the superintendent and posted up on the premises of such importer in both the English and Chinese languages shall have the same force and effect as regulations made under section *twenty-nine* of the said Ordinance and any labourer contravening such rules shall be liable on conviction to a penalty not exceeding one pound and in default of payment to imprisonment with or without hard labour for a period not exceeding seven days.

12. Sub-section (2) of section *thirty-one* of the said Ordinance shall be and is hereby amended by the deletion of the words "the penalties provided in section *six*" in the last line of the said section and by the insertion in lieu thereof of

* As to fees for bringing in Chinese deserters, see Govt. Notice No. 860 of 1905 (*Gazette*, 6/10/05).

Addition of new sub-sections to section *thirty-one* of Ordinance No. 17 of 1904 penalising possession by and sale to labourers of opium.

Secretary or manager of company which is an importer to be deemed the importer for purposes of criminal proceedings.

Private person may arrest labourer outside Witwatersrand District.

Importer to make rules for observance of sanitary precautions.

Amendment of sub-section (2) of section *thirty-one* of the said Ordinance.

the words " a fine not exceeding one hundred pounds and in default of payment to imprisonment for a period not exceeding six months."

†13. The Lieutenant-Governor may from time to time make Regulations. alter and repeal regulations as to the manner in which persons may be summoned as witnesses at any trial held by the superintendent or inspector under the powers of this Ordinance the procedure on such trials and for the better carrying out the objects and purposes of this Ordinance.

14. This Ordinance may be cited for all purposes as the Title. Labour Importation Amendment Ordinance 1905 and shall be read as one with the Labour Importation Ordinance 1904.

† As to regulations, see Govt. Notice No. 849 of 1905 (*Gazette*, 26/9/05).

By W. V. L. 1905

No. 29 of 1905.]

[Promulgated 22nd September, 1905.]

AN ORDINANCE

TO AMEND THE LOCAL AUTHORITIES RATING ORDINANCE 1903.

Assented to 19th September, 1905.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Rateability of railway property used for residential purposes.

1. Notwithstanding anything in the Local Authorities Rating Ordinance 1903 contained all property which is vested in the High Commissioner and Governor by clause *one* of the Inter-Colonial Council (South Africa) Order in Council (No. 2) 1905 shall so far as the same is used for residential purposes by persons employed by the Central South African Railways be deemed to be rateable property and the General Manager of the said railways shall for the purpose of the said Ordinance and this Ordinance be deemed to be the owner of such rateable property.

Title.

2. This Ordinance may be cited for all purposes as the Railway Dwellings Rating Ordinance 1905.

No. 30 of 1905.] [Promulgated 22nd September, 1905.]

‡AN ORDINANCE

TO AMEND THE RAND WATER BOARD EXTENDED POWERS
ORDINANCE 1904.

Assented to 19th September, 1905.

WHEREAS it is expedient to amend the Rand Water Board
Extended Powers Ordinance 1904 in certain respects;

Be it enacted by the Lieutenant-Governor of the Transvaal
with the advice and consent of the Legislative Council thereof
as follows:—

1. Section *ten* of the Rand Water Board Extended Powers
Ordinance 1904 (hereinafter referred to as the said Ordinance)
shall be and is hereby amended as follows:—

Amendment
of section *ten*
of Ordinance
No. 48 of 1904.

(1) By the omission from sub-section (*b*) of the said
section of all words after the word “therewith.”

(2) By the omission from sub-section (*c*) of the said section
of the words “purchase voluntarily or.”

(3) By the addition to the said section of the following
new sub-section:—

“(k) To purchase or acquire voluntarily from any person
or persons engaged in mining or prospecting opera-
tions any water made available during the course or
in consequence of such operations.”

2. *Repealed by Act No. 22, 1909, section two.*

Additional
proviso to
section *fifteen*
of Ordinance
No. 48 of 1904

3. Sub-section (1) of section *one hundred and seven* of the
said Ordinance shall be and is hereby repealed and there shall
be substituted therefor the following provision:—

Repeal of
sub-section
(1) of section
*one hundred
and seven* of
Ordinance No.
48 of 1904 and
substitution
of new sub-
section.

*For text, see Ordinance No. 48, 1904, section one hundred
and seven (1).*

4. This Ordinance may be cited for all purposes as the
Rand Water Board Extended Powers Amendment Ordinance
1905 and shall be read as one with the Rand Water Board
Incorporation Ordinance 1903 and the Rand Water Board
Extended Powers Ordinance 1904.

Title.

‡ See Ord. No. 21 of 1906 and Act No. 22 of 1909.

No. 32 of 1905.]

[Promulgated 6th October, 1905.]

AN ORDINANCE

TO MAKE PROVISION RELATING TO THE HEALTH OF COLOURED LABOURERS ON MINES AND WORKS IN THE LABOUR DISTRICTS AND TO SECURE UNIFORMITY IN CARRYING OUT SUCH PROVISIONS.

Assented to 30th September, 1905.

WHEREAS it is expedient to confer the power of making Regulations for the maintenance of the health of coloured labourers employed in or about mines and works to secure uniformity in such Regulations and to determine by what authorities the same should be carried out and enforced;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Interpretation of terms.

1. In this Ordinance and any Regulations made thereunder the expressions "mine" and "works" shall have respectively the meanings assigned to them in the Mines Works and Machinery Regulations Ordinance 1903 or in any law from time to time amending the same and the expression "labour district" shall mean any area from time to time proclaimed as such under the Native Passes Proclamation 1901 or any law amending the same; and the expression "owner" shall include in the case of a firm or partnership all or any one or more of the members of such firm or partnership and in the case of a company or body of persons not being a firm or partnership the secretary or manager of such company or body and if there be no secretary or manager resident within the Colony then any director or member of the managing board or committee of such company or body or any manager in the employ of such company or body.

Power to make regulations relative to inspection housing and food of coloured labourers.

*2. (1) The Lieutenant-Governor may from time to time make alter and repeal Regulations for all or any of the following matters:—

(a) For the medical examination of coloured labourers recruited for labour on any mine or works in a labour district;

(b) for securing the proper housing and feeding of such labourers and the observance of all requisite sanitary precautions in places other than the underground workings of a mine;

* For regulations see Govt. Notices Nos. 569 of 1906 (*Gazette*, 8/10/06), 292 of 1907 (*Gazette*, 8/3/07), 4 of 1908 (*Gazette*, 3/1/08).

- (c) for the care of such labourers when sick or injured;
- (d) for the inspection of premises on which such labourers reside.

(2) Any such Regulations may prescribe penalties for the contravention thereof not exceeding a fine of one hundred pounds and in default of payment imprisonment for one year or imprisonment for such period without the option of a fine or both such fine and such imprisonment and different penalties may be imposed for continuing contraventions or second or subsequent contraventions of such Regulations.

(3) The authority for carrying out and enforcing such Regulations shall be the Commissioner for Native Affairs.

3. Every such Regulation shall be promulgated by notice in the *Gazette* and upon such promulgation shall have the force of law within any labour district for which the same is made and the Lieutenant-Governor may suspend on any mine the operation of any bye-law made by the Council of any Municipality relating to any matter dealt with by such Regulation in so far as such labourers are concerned provided always that no proceedings pending under such suspended bye-law at the date of its suspension shall be affected thereby.

Regulations to have effect of suspending Municipal bye-laws on same subject matter.

4. Any notice order or other document which may under the Regulations aforesaid be required to be served upon an owner as in this Ordinance defined shall be served personally on such owner or left or sent by registered post to his last usual place of abode or business and if such owner shall be absent from this Colony such notice order or other document shall be served on any agent of his.

Service of notices orders and documents.

5. Nothing in this Ordinance or any Regulations made thereunder shall be deemed to apply to any such labourer as is mentioned in and defined by the Labour Importation Ordinance 1904.

Ordinance not to apply to labourers mentioned in Labour Importation Ordinance 1904.

6. This Ordinance may be cited for all purposes as The Coloured Labourers Health Regulations Ordinance 1905.

Title.

No. 33 of 1905.]

[Promulgated 6th October, 1905.]

AN ORDINANCE

TO LEGALIZE CERTAIN MARRIAGES SOLEMNIZED IN THIS COLONY.

Assented to 2nd October, 1905.

WHEREAS the provisions of Law No. 3 of 1871 require that a marriage between white persons should be solemnized by a Resident Magistrate or by a minister of religion authorized by the Lieutenant-Governor to solemnize marriages upon the production of a certificate from the Resident Magistrate that the provisions of the law have been complied with;

And whereas the provisions of Law No. 3 of 1897 require that a marriage between coloured persons should be solemnized by an officer appointed by the Lieutenant-Governor for that purpose or by a recognized minister of religion appointed by the Lieutenant-Governor on production of a certificate that the provisions of the law have been complied with;

And whereas certain marriages have prior to this Ordinance been solemnized between white persons by ministers of religion not authorized to solemnize such marriages under the provisions of Law No. 3 of 1871;

And whereas certain other marriages have prior to this Ordinance been solemnized between coloured persons by persons not appointed marriage officers for coloured persons under the provisions of Law No. 3 of 1897;

And whereas in every such case aforesaid the marriages so solemnized were entered into by the parties thereto bona fide and in the belief that the same were valid and binding marriages and in every such case the said marriages would in fact have been valid and binding marriages save for the incapacity of the persons purporting to solemnize the same;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Legalization
of certain
marriages
between
white persons
solemnized
by ministers
of religion not
authorized
under Law
No. 3 of 1871.

1. The marriages mentioned in the First Schedule hereto solemnized at the dates stated therein by recognized ministers of religion acting bona fide in the belief that they were persons authorized by the Lieutenant-Governor to solemnize such marriages in accordance with the provisions of Law No. 3 of 1871 shall be deemed to have been from the date thereof valid and binding marriages between the parties thereto and effectual for all purposes as if the ministers of religion solemnizing the same had been authorized thereto under the said law; provided always that in every other respect the provisions of the said Law No. 3 of 1871 shall have been complied with and that there was in each case no impediment in law to such marriage.

2. The marriages mentioned in the Second Schedule hereto on the dates therein stated solemnized by persons acting bona fide and in the belief that they were persons authorized under the provisions of Law No. 3 of 1897 to solemnize such marriages shall be as valid and binding between the parties thereto and as effectual for all purposes as if the persons solemnizing such marriages had been appointed marriage officers under the provisions of the said Law No. 3 of 1897; provided always that in every other respect the provisions of such law shall have been complied with and that there was in each case no impediment in law to such marriage.

Legalization of certain marriages between coloured persons solemnized by persons not appointed under Law No. 3 of 1897.

3. This Ordinance may be cited for all purposes as The

Title.

FIRST SCHEDULE.

Date of Marriage.	Full Names of the Contracting Parties.
4th November, 1902	Christian Petersen Holdt—Christine Caroline Hansen.
11th November, 1902	Walter Weekes Bickford—Minnie Oliver Perry.
17th November, 1902	Johann Heinrich Schepmann—Emma Dorothea Lohann.
10th January, 1903	Reginald Andrew von Blanckenberg—Laura Veryan Truscott.
9th September, 1903	William Duke Parke—Etty Sarah Lee.
16th December, 1903	Edward John Nixon—Ellen Elizabeth Philipson Stow.
7th January, 1904	Robert Alexander Lambert—Minnie Margaret Buckley.
30th March, 1904	Henry James Carter—Alicia De Neufville Lucas.
23rd November, 1904	Robert Bertram Edgar Shaw—Dacie Emmeline Palmer.
28th December, 1904	Walter Croft Laurance—Maude Annie Gayfer.
20th March, 1905	Reginald Henry Wilkins—Lily Louise Sturgess.
24th April, 1905	Daniel Arthur Cassidy—Ada Jane Stephens.
27th April, 1905	Andrew Scott—Annie Isabel Hilliard.
7th June, 1905	Horace Shaw—Alice Jessie Marr.
13th June, 1905	William Walker—Jane Margaret Marshall.
13th June, 1905	Peter Allan—Amy Agnes Marshall.
19th July, 1905	George Richard Downes—Phyllis Annand.
7th August, 1905	James Currie Hamilton—Edith Berry.

SECOND SCHEDULE.

Date of Marriage.	Full Names of the Contracting Parties.
18th July, 1900	Joseph Mahuma and Dorothea Mashele.
18th July, 1900	Salomon More and Miryam Mogapi.
18th July, 1900	Ernst Mashele and Adreanike Mogapi.
25th July, 1900	Philemon More and Hermini Thobie.
25th July, 1900	Ephraim More and Sanni Mahuma.
4th September, 1900	Johannes Tau and Henrietta Molapo.
12th September, 1900	Tom Damana and Catherine Zembele.
26th September, 1900	Paulus Mabiletsa and Clara Elizabeth Matuka.
11th October, 1900	Jacob Kgopane and Monika Magalane.
17th October, 1900	David Moagi and Hermina Musi.
24th October, 1900	Hermanus Ramatlo and Priscilla Moikanyain.
21st November, 1900	Willem Musi and Anna Maboka.
21st November, 1900	Benjamin Modisane and Lydia Marobyane.
30th January, 1901	Blose Mccunu and Harriet Dhlambula.
6th February, 1901	David Tusi and Lahlime Ndhorm.
8th February, 1901	William Zungu and Maggie Mogode.
3rd April, 1901	John Dlakiya and Zelitta Pieter Vokongo.
11th April, 1901	Stephen Magwala and Sophy Kapani.
19th April, 1901	Phemoko Nare and Betta Flore.
4th June, 1901	James Mbeku and Julia Simondil.
20th August, 1901	Jacob Seku and Martha Tali.
20th August, 1901	Salomo Nare and Regina Molea.
20th August, 1901	Klaas and Kaatje.
4th September, 1901	Jesaifa Komapi and Waldina Mohetoa.
26th September, 1901	Lehama Lesidi and Dotie Moloe.
19th October, 1901	Johannes Malolyk and Regina Mofatta.
21st October, 1901	Jacobus Mohoma and Hendrika Thabane.
21st October, 1901	Sam James and Jacoba Groenewald.
9th December, 1902	Adam Molapisan and Rebecca Abrahams.
18th December, 1902	Jacobus Mothobi and Elsie Seitisho.
30th December, 1902	James Mawai and Margaret Bosman.
30th December, 1902	Gabriel Dithepe and Andorneck Setlare.
30th December, 1902	Stoffel Lebatsi and Martha Morumi.
30th December, 1902	Stoffel Molosi and Martha Mokai.
30th December, 1902	David Sibolai and Dorothea Molusi.
30th December, 1902	Israel Masiti and Emelia Homilan.
3rd February, 1903	Samuel Matlave and Joconitha Kgantsi.
3rd February, 1903	Henry Wesenyane and Dora Shuping.
3rd February, 1903	Frank Choche and Rebecca Motshomi.
4th February, 1903	Cornelis Gessint and Dorcas Aspling.
9th February, 1903	Zacharia Matlave Gagoive and Martha Mokaë.
9th February, 1903	September Cezari and Gessina Sindi.
16th February, 1903	Stephen Moje and Sophia Sebali.
20th February, 1903	Adam Riuter and Johanna Sechele.
25th February, 1903	Daniel Khuluge and Fransina Mokgeti.
13th May, 1903	Josias Moretele and Elisabeth Tshephe.
17th November, 1903	Elias Molise and Johanna Rakube.

No. 34 of 1905.]

[Promulgated 6th October, 1905.

AN ORDINANCE

TO TRANSFER CERTAIN CROWN LAND TO THE MUNICIPALITY
OF PRETORIA UPON CERTAIN CONDITIONS.

Assented to 30th September, 1905.

WHEREAS the farm Groenkloof No. 419 in the District of Pretoria (on which are situate certain springs the source of the water supply of the inhabitants of the Municipality of Pretoria) is Crown land;

And whereas it is expedient that a portion of the said farm should be transferred to the Town Council of the said Municipality but subject to certain conditions;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. So much of the farm Groenkloof No. 419 in the District of Pretoria as is coloured red upon a plan deposited at the office of the Surveyor-General and signed respectively by Adam Jameson and A. Johnston and dated 25th July 1905 together with all the rights to take any water flowing or otherwise derived from any springs or sources of water upon the said portion of the said farm may be granted by the Lieutenant-Governor to the Town Council of Pretoria (hereinafter described as "the Council") subject to the rights of the persons legally entitled to the use of such water and the Registrar of Deeds shall cause the said portion of the said farm granted as aforesaid to be transferred in the Deeds Office registers into the name of the Council free of transfer duty stamps and other charges; provided that such grant shall be subject to such leases servitudes or encumbrances as may be at the date of this Ordinance registered against the title of the said farm and shall be further subject to the provisions of this Ordinance.

Transfer of farm Groenkloof to the Town Council of Pretoria.

2. (1) It shall be lawful for the General Officer Commanding His Majesty's Forces in this Colony to take or cause to be taken for the use of such of His Majesty's Forces as may from time to time be quartered in the Military Cantonments known as "Roberts Heights" as marked on the said plan a quantity of water not exceeding two hundred thousand gallons per day from the springs upon a certain piece of land coloured green on the said plan and free of any charge by the Council and the Council shall not do or authorize to be done save as provided by this Ordinance any act which will prevent the exercise of the powers of this section or diminish the quantity of water which may be taken thereunder for the uses aforesaid.

Power to military authorities to take a certain limited quantity of water from the springs.

(2) All water taken under the powers of this section shall be pumped or otherwise led within the area of the piece of land coloured green on the said plan. There shall be registered in the Deeds Office as a servitude in favour of the Crown and against the title of the portion of the said farm granted to the Council under this Ordinance the right to carry water by means of a pipe from the said piece of land to the said Cantonments together with the right to erect and maintain on such piece of land coloured green all buildings machinery and other accessories for the pumping and carrying of water as in this Ordinance is provided.

(3) All water taken under the powers of this section shall be pumped or otherwise led in accordance with the regulations prescribed from time to time by the Lieutenant-Governor.

Duty of Council to defray cost in military authorities pump rendered necessary by exercise of Councils powers in relation to waterworks.

3. It at any time the Council shall in accordance with the provisions of any law construct lay down or repair any works for the supply of water and shall thereby diminish the quantity of water authorized to be taken under this Ordinance for the use of His Majesty's Forces by means of a certain pump or other machinery erected on the piece of land mentioned in the last preceding section the Council shall defray so much of the cost of any addition to or alteration of the said pump or machinery as may be necessary to enable a quantity of water not exceeding two hundred thousand gallons per day to be taken as aforesaid for the use of His Majesty's Forces.

No action to be brought against military authorities or Council in relation to taking of water.

4. The taking of water from the said springs for the use of His Majesty's Forces prior to the date of the taking effect of this Ordinance or under the powers mentioned in sub-section (1) of section *two* hereof shall be deemed to be lawful acts and no action or other proceedings at law shall be maintained in respect of such acts either against the Council or against the General Officer Commanding His Majesty's Forces in this Colony.

Council to obtain approval of Lieutenant-Governor to works calculated to diminish supply from the springs.

5. Notwithstanding anything contained in the Pretoria Municipal Proclamation 1902 or in any other law empowering the Council to execute maintain or repair works for the supply of water and all other works incidental thereto it shall not be lawful for the Council or any person to dig cut blast or in any way interfere with the surface of the ground in the neighbourhood of any springs or sources of water on the portion of the said farm granted to the Council under this Ordinance except in such manner as may be approved by the Lieutenant-Governor.

Duty of Council to supply 100,000 gallons a day to the Government for certain purposes.

6. It shall be the duty of the Council to supply and deliver in pipes free of charge in such quantities and in such places as the Commissioner of Lands may direct to all buildings within the Municipality which may be from time to time used for public purposes and to the boundaries of the Municipality for any dwelling (with any outbuildings gardens or plantations connected with the same) occupied from time to time as the residence of the Governor or Lieutenant-Governor of this Colony; provided always that the total quantity of water which the Council shall supply under the provisions of this

section and for the purposes mentioned therein shall not exceed one hundred thousand gallons per day; provided further that all expenses of laying any pipes or constructing any works or appliances for the conveyance or supply of such water beyond the boundary line or above the level of the public street within the limits of the municipality shall be borne and paid by the Government.

7. The portion of the said farm Groenkloof No. 419 granted to the Council under this Ordinance shall be deemed and taken to be portion of the town lands of Pretoria for the purposes of the Town Lands Ordinance 1904 and any amendment thereof.

The farm Groenkloof to form part of the town lands of Pretoria.

8. This Ordinance may be cited for all purposes as the Pretoria and Military Water Supply Ordinance 1905.

Title.

No. I (Private) of 1905.] [Promulgated 22nd September, 1905.

AN ORDINANCE

TO CONSOLIDATE AND AMEND THE CONSTITUTION OF THE
INCORPORATED LAW SOCIETY OF THE TRANSVAAL.

Assented to 18th September, 1905.

WHEREAS it is expedient to consolidate and amend the Constitution of the Incorporated Law Society of the Transvaal and to confer further powers thereon;

Be it therefore enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Repeal of laws.

1. The laws set forth and specified in the Schedule to this Ordinance attached together with any other law or laws are in so far as they are inconsistent with any of the provisions of this Ordinance hereby repealed.

Incorporation of Society.

2. The Incorporated Law Society as established by the Constitution confirmed by First Volksraad Resolution of the 26th August 1893 article *one thousand two hundred and twenty-seven* and by Proclamation (Transvaal) No. 18 of 1902 shall consist of all attorneys all notaries and all conveyancers duly admitted enrolled and practising as such in this Colony.

Society to exist in perpetuity.

3. The Society shall be a corporation and shall continue to exist as such in perpetuity.

Objects of Society.

4. The objects for which the Society is established are
(a) to consider originate and promote reforms and improvements in law; to consider proposed alterations and oppose or support the same; to remedy defects in the administration of justice; to effect improvements in administration or practice; and for the said purposes or any of them to petition the Legislative Council or Legislative Assembly or take such other proceedings as may be deemed expedient;

(b) to represent generally the views of the profession; to preserve and maintain its integrity and status; to suppress dishonourable conduct or practices; to provide for the amicable settlement or adjustment of professional disputes; and to consider and deal with all matters affecting the professional interests of the members of the Society;

(c) to encourage and promote the study of law and to provide means for securing efficiency and responsibility on the part of those seeking admission to the profession and to conduct or regulate legal examinations;

(d) to form support and maintain a law library or law libraries and reading-rooms;

(e) to acquire any rights or privileges which the society may regard as necessary or convenient for the purposes thereof and to make donations for promoting the interests of the profession;

(f) to purchase take on lease or in exchange hire or otherwise acquire any movable or immovable property and to erect any buildings required for the purposes of the Society;

(g) to invest moneys of the Society not immediately required upon such securities as may from time to time be determined;

(h) to raise or borrow money in such manner as the Society may think fit and in particular by mortgage bonds or by the issue of debentures secured by mortgage bonds upon all or any of the property of the Society both present and future;

(i) to sell improve lease mortgage dispose of or otherwise deal with all or any part of the property of the Society;

(j) to do all such other things as are incidental or conducive to the attainment of the above objects.

5. For the proper management of the affairs of the Society a Council shall be appointed in manner hereinafter mentioned. Appointment of Council.
The Council shall consist of nine persons being members of the Society who shall from among their number elect a president and a vice-president who shall be president and vice-president of the Society respectively. The vice-president may in the absence of the president or in case of his inability to act exercise any or all of the duties and functions appertaining to the office of president.

6. The members of the present Council shall continue in office until the Society at its next annual general meeting shall elect a new Council in the manner prescribed in the bye-laws and regulations hereinafter mentioned. Until otherwise decided by a general meeting of the Society three members of the Council shall form a quorum. Present Council to continue in office till election of new Council.

7. The new Council to be elected as provided in the preceding section shall remain in office until the next succeeding annual general meeting when all the members shall retire and a new Council shall be elected and so on from year to year: provided always that retiring members of the Council shall be eligible for re-election and shall remain in office until their successors have been elected. Council to remain in office for one year.

8. Any casual vacancy in the Council may be filled up by the Council. Any act or deed of the Council notwithstanding any such vacancy shall be as lawful as the same would have been if no vacancy had arisen; provided however that the number of members of the council be sufficient to form a quorum. Vacancies in Council.

9. The management of the business and control of the Society shall be vested in the Council who may exercise all such powers and do all such things as may be exercised or done by Management of Society vested in Council.

the society and are not hereby expressly directed or required to be exercised or done by the Society in general meeting; provided however that no agreement for the sale or mortgage of the immovable property of the Society shall be binding unless the same shall have been confirmed by the vote of two-thirds of the members of the Society present in person or represented by proxy at a general meeting specially convened for the purpose.

Members struck off roll cease to be members.

10. In case any member of the Society shall by reason of any order of any competent court be struck off the roll such person shall *ipso facto* cease to be a member of the Society and any member of the Society suspended shall during the period of such suspension not be entitled to the privileges of membership of the Society.

Annual subscription to Society and method of recovering same.

11. Each member of the Society shall pay an annual subscription at such time and of such amount as may from time to time be determined upon in general meeting and unless and until otherwise determined the annual subscription shall be the sum of two guineas for each member and shall be payable on the first day of July in each year in advance and all sums of money due or payable by members of the Society may be recovered in the Supreme Court by motion made by the president in the name of the Society after due written notice to the person concerned. An affidavit by the secretary setting forth the necessary facts shall be sufficient evidence upon which the court or a judge in chambers may grant an order or pronounce judgment on such motion or application and the same shall be enforceable in ordinary course of law. The Society shall be entitled to appear by counsel in the matter of such motion or application and shall be entitled to costs against the respondent unless the court shall see fit to order otherwise.

General meetings.

12. A general meeting of the Society shall be held yearly in the month of July of each year or as soon thereafter as may be convenient. Such general meetings shall be held alternately at Pretoria and Johannesburg. The first annual general meeting after the coming into effect of this Ordinance shall be held in Pretoria. Special general meetings shall be held when and where deemed necessary by the Council.

Council to call general meeting on requisition.

13. The Council shall upon a requisition made in writing by not less than twenty members of the Society convene a special general meeting and every such requisition shall specify the objects of the meeting required and shall be signed by the members making the same and shall be deposited with the secretary of the Society. It may be composed of several documents in like form signed by one or more of the requisitionists. In case the Council should fail or neglect for fourteen days after such deposit to convene a special general meeting to be held within thirty days after such deposit any members not being less than twenty in number may convene a meeting to be held at any time within two months after such deposit by giving not less than fourteen days notice of such meeting and the object of such meeting and also stating the date place

(being either in Pretoria or Johannesburg) and hour of such meeting by advertisement in the *Gazette* and three or more newspapers published in Pretoria or Johannesburg and such notice shall appear at least twice in each such paper.

14. The quorum of a general meeting of the Society shall be ten members personally present. Quorum at general meeting.

15. Every person intending to serve an attorney under articles shall before entering into articles and prior to the commencement of such service pass the matriculation examination of the University of the Cape of Good Hope and any service performed prior to the passing of such matriculation examination shall notwithstanding the provisions of section *twenty-one* hereof be null and void and of no effect provided always that any person who shall hold a certificate of having passed any examination which is covered by a Proclamation issued in terms of sub-section (c) of section *twelve* of the Administration of Justice Proclamation 1902 shall for the purposes of this section be deemed and taken to be in the same position as if he had duly passed the said examination. Examination to be passed by person before entering into articles.

16. From and after the date of the coming into effect of this Ordinance a duplicate original of all articles of clerkship shall be lodged with the secretary of the Society within sixty days of the date of such articles together with a duplicate affidavit testifying to the signatures and date thereof and on payment of such fee not exceeding ten guineas sterling as may from time to time be fixed by the Council and on production of the original articles of clerkship and affidavit attesting the signatures and dates the secretary shall upon being satisfied that the articles are in order and that no objection is made by the Council against the registration thereof endorse upon such original articles a certificate to the effect that the provisions of this section have been complied with; provided always that nothing in this section contained shall be held to prejudice the registration of articles entered into by any person prior to the taking effect of this Ordinance. Articles to be registered with secretary.

17. The original articles of clerkship shall in every case within sixty days of the date of such articles be lodged together with an affidavit testifying to the signatures and date thereof and where the same was executed with the Registrar of the Supreme Court for the purposes of registration provided that no such articles shall be accepted by the Registrar unless and until proof shall have been adduced that the articles have been duly endorsed by the secretary of the Society as required under the provisions of section *sixteen* hereof but in the event of such articles not being registered within such sixty days then the service shall be reckoned to commence only as from the date of such registration; provided however that nothing in this section contained shall be held to prejudice the registration of articles duly entered into prior to the coming into effect of this Ordinance. Articles to be lodged with Registrar of Supreme Court.

18. Every cession of articles shall within forty-two days of the execution thereof be lodged with the Registrar of the Cession of articles to be lodged with Registrar.

Supreme Court for the purpose of registration together with an affidavit in like form as in the last preceding section prescribed and a certificate from the secretary to the society to the effect that the provisions of section *nineteen* have been complied with; and no such cession shall be registered after the said period of forty-two days without an order of the Supreme Court.

Duplicate cession of articles to be lodged with secretary.

19. A duplicate original of each cession of articles shall within forty-two days of the date thereof be lodged with the secretary to the Society and every such cession shall contain an affidavit by the party so ceding as to the due and proper service and as to the date at which the article clerk left his employment and an affidavit by the party in whose favour the cession is made as to the date at which the said clerk entered his employment; and upon production of the original cession and affidavits and upon payment of such sum not exceeding five guineas sterling as may from time to time be fixed by the council the secretary shall upon being satisfied that the said cession is in order and that no objection is made by the Council against the registration thereof endorse upon such original cession a certificate to the effect that the provisions of this section have been complied with.

Attorney not in practice or practising as clerk not to have article clerk.

20. No attorney shall take have or retain any clerk under articles after such attorney shall have discontinued or left off practising as or carrying on the business of an attorney nor whilst such attorney shall be retained or employed as a clerk by any other attorney; and service by any clerk under articles to an attorney for and during the whole or any part of the time that such attorney shall be so employed as clerk to any other attorney shall not be deemed or accounted good or sufficient service for the purposes of this Ordinance.

No attorney shall have more than three article clerks at any one time provided that nothing in this section contained shall prejudice the articles of any clerk who shall prior to the date of the taking effect of this Ordinance be article to an attorney who may have more than two other article clerks; and provided further that on the death or retirement from business of a member of a firm his surviving or remaining partner may take cession of the articles of any clerks who may have been article to his partner so deceased or retiring although the said surviving or remaining partner may at the time have as many clerks article to him as are by law allowed.

Irregular service of articles.

21. Where any person article to a practising attorney has not served under such articles strictly within the provisions of this Ordinance it shall be lawful for the Supreme Court upon being satisfied that such irregular service was occasioned by accident mistake or other sufficient cause and that such service although irregular is substantially equivalent to regular service to permit such person upon such conditions as to further and additional service as may seem fit to present (if otherwise qualified) his petition for admission as an attorney in the same manner as if the service in question had been regular and in conformity with the provisions of this Ordinance.

22. Every articed clerk shall during the whole term of service specified in the articles of clerkship be and continue to be in the actual employment and in the office and under the direct personal supervision of such attorney or his partner or partners in the proper business practice and employment of an attorney: provided that such articles may with the mutual consent of such attorney and clerk be ceded as hereinbefore provided to any other attorney who may be willing to accept cession: and provided further that in the event of the death insanity insolvency conviction for crime imprisonment for debt suspension striking off the rolls or discontinuance of practice of the attorney under whom such clerk is serving or other similar and sufficient cause it shall be lawful for the Supreme Court to direct that such articles be ceded to any other attorney who may be willing to receive such articed clerk under cession as aforesaid; and all service completed under this proviso shall be good and effectual for the purposes of this Ordinance.

Articed clerk to be in actual employment of attorney for whole period of articles.

23. No person who may become bound under articles of clerkship to any attorney shall during his term of service without the consent of the Council of the Society previously had and obtained hold any office or engage in any business whatsoever other than that of clerk to such attorney and his partner or partners if any in the business practice and employment of an attorney; nor shall any such person during the term of such service have any pecuniary interest in the business practice and employment of an attorney. In the event of the contravention of this section such articles shall be null and void *ab initio* and service thereunder shall be ineffectual.

No articed clerk to engage in business.

24. Every person applying to be admitted as an attorney shall twenty-eight days at least prior to the date of his application lodge with the secretary to the Society a copy of his petition for admission together with copies of all affidavits certificates and other documents or papers which are therein referred to or therewith connected and upon production to the said secretary of the petition and affidavits certificates and other documents or papers and upon payment to the Society of such fee not exceeding five guineas sterling as may from time to time be fixed by the Council the secretary shall endorse upon such petition a certificate to the effect that the provisions of this section have been complied with: provided further that it shall be competent to the Council to formulate rules and regulations regarding the matters to be set forth and the information to be supplied for the use of the court by the petitioner in every such petition for admittance.

Person applying for admission as attorney to lodge with secretary copies of petition and affidavits.

25. Every application to strike off the rolls or suspend an attorney notary or conveyancer shall be by way of motion in the Supreme Court supported by affidavit or affidavits of the facts on which the application is based: provided however that the court shall have power to order that any question of fact shall be tried by pleadings and proof or otherwise as the Supreme Court shall see fit.

Applications to strike off roll or to suspend practitioner.

Order of suspension or striking off roll to be recorded and practitioner to surrender certificates.

26. When any attorney notary or conveyancer shall be struck off the rolls or suspended from practice the Registrar of the Supreme Court shall enter in his books a note or minute of such order opposite the name of any such attorney notary or conveyancer and shall forthwith forward a copy of such order to the secretary of the Society; and any attorney notary or conveyancer so struck off the rolls or suspended shall forthwith forward his certificate or certificates of enrolment to the Registrar of the Supreme Court and in case of failure so to do may be committed for contempt of court.

Separate lists of practitioners to be kept.

27. The Registrar of the Supreme Court shall keep separate alphabetical lists of all attorneys notaries and conveyancers duly admitted by the Supreme Court.

Practitioners to register with Registrar of Supreme Court and secretary full name and address and to notify change of address.

28. Every person who at the date of the passing of this Ordinance is a duly qualified attorney notary or conveyancer practising within this Colony shall within three months next after such date and every person who may after the date of the passing of this Ordinance be enrolled as an attorney shall within thirty days after such enrolment lodge with the Registrar of the Supreme Court and also with the secretary to the Society a statement of his full name and place of business; and every such attorney notary or conveyancer shall within seven days of any subsequent change of address of his place of business send or cause to be sent to the said Registrar and to the said secretary respectively a notification of the address of such new place of business together with a statement of his full name and former address; and it shall be incumbent upon every attorney notary or conveyancer who may be carrying on business in partnership or under a firm name to send or cause to be sent to the said Registrar and secretary within (*mutatis mutandis*) the times above specified a statement of the name or names of his partner or partners in such business and the firm name under which the business is carried on. Any attorney notary or conveyancer neglecting or delaying to comply with the requirements of this section shall incur a penalty not exceeding twenty shillings sterling for every week during which he shall so neglect or delay and such penalty shall be recoverable with costs at the instance of the Society; and if such neglect or delay shall be shown to be wilful it shall be lawful for the Supreme Court to suspend such attorney notary or conveyancer for such period or to make such other order as may seem fit.

Special books to be kept by Registrar and secretary.

29. In pursuance of the provisions of the preceding section the Registrar of the Supreme Court and the secretary of the Society shall keep special books in which shall be entered all such names and addresses together with subsequent changes of addresses as may be notified under the requirements of the said section.

Branch offices.

30. No attorney notary or conveyancer or firm of attorneys notaries or conveyancers shall have or retain any branch office for the purpose of carrying on the business and profession of attorney notary or conveyancer save and only when such branch

office shall be continually under the direct and personal supervision of one or more partners of such firm or of a duly qualified attorney continually in residence at the place or town where such branch office is established.

31. The Society shall be entitled to appear in support of or in opposition to any application made under the provisions of this Ordinance. Any proceedings instituted under the provisions of this Ordinance shall be taken in the Supreme Court.

Society entitled to appear in all proceedings under this Ordinance.

32. (1) It shall not be lawful for any person who has not been admitted and enrolled as an attorney notary or conveyancer or who having been so admitted and enrolled shall have been struck off the rolls or suspended from practice to carry on the business of an attorney notary or conveyancer directly or indirectly by himself or in partnership or association with any other person who is practising as an attorney notary or conveyancer and no person who shall have been struck off the rolls shall after being so struck off be employed in any way whatsoever whether as a clerk or otherwise by any attorney notary or conveyancer.

Unqualified persons and attorneys struck off or suspended not to practise.

(2) It shall not be lawful for any attorney notary or conveyancer to employ in any way whatsoever any person who shall be struck off the rolls or suspended from practice during the period of his suspension.

(3) Any person contravening the provisions of either of the last preceding sub-sections shall for each offence be liable on conviction to a penalty not exceeding fifty pounds.

33. No person other than an attorney notary or conveyancer shall in any manner hold himself out as or pretend to be or make use of any words or any name title or addition or description implying or tending to the belief that he is an attorney notary or conveyancer or is recognised by law as such and any person acting in contravention of this section shall on conviction be liable to a penalty not exceeding the sum of fifty pounds sterling for every such offence.

Penalty for unqualified person holding himself out as practitioner.

34. No attorney notary or conveyancer shall make over to share or divide with any person other than a practising attorney notary or conveyancer respectively either by way of partnership commission or allowance or in any other manner any portion whatsoever of his professional fees earned as such attorney notary or conveyancer respectively save and except by way of allowance under any regulation which may hereafter be put in force in terms of sub-section (g) of section *thirty-seven* hereof; and any attorney notary or conveyancer contravening this section shall be liable for a first offence to a penalty not exceeding fifty pounds and for each subsequent offence to a penalty not exceeding one hundred pounds and may in addition to such penalty be struck off the rolls or suspended from practice for such term as the Supreme Court may direct.

Sharing of fees with qualified or unqualified person.

Fees payable
for
certificates.

35. For every certificate obtained from the Society the party or parties to whom the same refers shall save where otherwise specified in this Ordinance pay to the Society such fee as may from time to time be fixed by the Council.

Existing
bye-laws to
remain in
force until
altered.

36. The existing bye-laws and regulations of the Society shall remain in force until amended or altered by new bye-laws or regulations framed approved and published under the terms of this Ordinance.

Power of
Council to
frame bye-
laws and
regulations.

*37. The Council may frame and from time to time alter amend add to or repeal bye-laws and regulations dealing with the following matters:—

- (a) What shall be considered unprofessional or dishonourable or unworthy conduct on the part of attorneys notaries or conveyancers;
- (b) the practice of the profession of attorneys notaries or conveyancers;
- (c) the proper and effective management and control of the society and its members;
- (d) convening and regulating the proceedings of or at meetings of the Council and Society and fixing the necessary quorums and method of voting thereat and regulating the election of the Council;
- (e) the annual subscription and other payments to be made by members to the Society;
- (f) the fees and charges payable to and chargeable by attorneys notaries and conveyancers;
- (g) to regulate the amount of and the persons to whom allowances may be made by attorneys notaries or conveyancers;
- (h) the form of articles of clerkship and the fees payable for the registration of the Society of such articles and sessions thereof;
- (i) penalties for the breach or non-observance of the bye-laws and regulations of the Society;
- (j) generally the attainment and carrying out of the objects of the Society the protection of members and the advancement of the interests of the profession.

All bye-laws and regulations framed under the terms of this Ordinance shall when approved of by the Lieutenant-Governor after consultation with the Chief Justice and published in the *Gazette* have the force of law so far as the same are not in conflict with the terms of this Ordinance.

Further
penalties for
contravention
of this
Ordinance.

38. Any attorney notary or conveyancer contravening any of the provisions of this Ordinance or of any bye-law or regulation of the Society shall in addition to the penalty if any provided in such provision bye-law or regulation be liable to be struck off the rolls or suspended at the discretion of the Supreme Court.

President and
secretary
empowered
to sign deeds.

39. Any deed or document which the Council shall by any resolution determine on executing shall be signed by the president of the Council and the secretary.

* For bye-laws and regulations, see Govt. Notice No. 1050 of 1905 (*Gazette*, 8/12/05).

40. The Council shall forthwith provide a common seal for the Society and shall have power from time to time to destroy the same and substitute a new seal in lieu thereof; the said seal shall be deposited at the office of the Society and shall never be affixed to any document except in the presence of a member of the Council and in pursuance of a resolution of the Council.

Common seal for Society.

41. The president vice-president and members of the Council shall not be subject or liable to any action or proceeding for damages on the ground of defamation slander or otherwise in the bona fide execution of their duties and the taking of any steps or the institution of any proceedings under the provisions of this Ordinance or purporting so to be.

Actions for damages against officers of the Council.

42. Nothing in this Ordinance contained shall affect in any way the rights of persons entitled to practise (as hitherto) as law agents in this Colony.

Exemption of law agents.

43. This Ordinance shall come into operation and shall have the force of law on the first day of December 1905 and may for all purposes be cited as the "Constitution of the Incorporated Law Society of the Transvaal Ordinance 1905".

Title.

SCHEDULE.

(a) The Constitution and Regulations of the Incorporated Law Society of The Transvaal as confirmed and amended by First Volksraad Resolution of 26th August 1893 Article 1227.

(b) Transvaal Proclamation No. 18 of 1902.

(c) Ordinance No. 4 of 1902.

No. II (Private) of 1905.] [Promulgated 22nd September, 1905.

AN ORDINANCE

TO CONFER FURTHER POWERS ON THE MUNICIPALITY OF
JOHANNESBURG.

Assented to 19th September, 1905.

WHEREAS it is desirable to add to and amend the Johannesburg Municipal Statutes 1901 to 1904;

And whereas it is desirable to amend the provisions of the law relating to the imposing and remission of Special Tramway Rates and to make provision for the imposing of Special Water Rates;

And whereas it is desirable to provide for the construction or improvement of footpaths kerbs and gutters in the Municipality of Johannesburg by enabling the Council of the said municipality to require the owners of interests in land abutting on or adjacent to any street either to execute the said works in such street or to pay the Council the cost of executing the same;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

PRELIMINARY.

Title.

1. This Ordinance may be cited as the Johannesburg Municipal Ordinance 1905 and shall be read as one with the Johannesburg Municipal Statutes 1901 to 1904 and this Ordinance and the Johannesburg Municipal Statutes 1901 to 1904 may be cited together as the Johannesburg Municipal Statutes 1901 to 1905.

Division of Ordinance into three parts.

2. This Ordinance is divided into three parts relating to the following matters respectively:—

Part I.—Amendments and additions to the Johannesburg Municipal Statutes 1901 to 1904.

Part II.—Provisions with regard to Special Tramway Rates and Special Water Rates.

Part III.—Provisions relating to Street Works.

PART I.

Part I has been repealed, with the exception of section six, by Ordinance No. II (Private), 1906, section one; and section six by Act No. 34, 1908, section forty-three (1).

PART II.

Part II has been repealed by Ordinance No. II (Private), 1906, section one.

PART III.

Provisions Relating to Street Works.

16. In this part of this Ordinance unless the context otherwise requires: Definitions.

“street” means any street road or thoroughfare vested in the Council under the Johannesburg Municipality Amendment Proclamation 1902 or the Johannesburg Municipality (Plans of Townships) Ordinance 1903 or shown on any plan of new building lots towns or townships deposited and approved under or in accordance with any of the bye-laws of the Council from time to time in force;

“land” includes any buildings thereon;

“rateable interest in land” or “rateable interest” means any interest in land which is rateable property under definition B contained in the Local Authorities Rating Ordinance, 1903;

“rateable property” means rateable property as defined in definition B contained in the Local Authorities Rating Ordinance, 1903;

“exempted interest in land” or “exempted interest” means and includes:

(1) any interest in land held by the Crown which if it were not so held would be rateable property;

(2) any interest in land used exclusively for public worship or for schools registered in the office of the Department of Public Education or for both public worship and education or for charitable institutions supported entirely by voluntary contributions which but for such use would be rateable property in so far as such interest is held for such purposes as aforesaid;

“interest in land” means and includes any interest in land which is either a rateable interest or an exempted interest as above defined;

“owner” means and includes:

(1) the person or persons in whose name shall be registered the legal title to any interest in land;

(2) in cases where the person in whom the legal estate is vested is insolvent or dead the person in whom the administration of such interest is vested as trustee executor administrator or otherwise;

(3) in the case of any interest in land held under a stand or claim licence or any other mining title issued under any law relating to mining for precious stones or for metals the registered holder of such licence or title;

“town clerk” “town treasurer” and “town engineer” mean the persons for the time being acting in the capacities of town clerk town treasurer and town engineer respectively;

“municipal area” means the area from time to time included within the Municipality of Johannesburg;

“local paper” means any paper circulated within the municipal area;

“street works” means the construction improvement or reconstruction of kerbs gutters or footwalks in any street but does not include repairs required for the purpose of maintaining any footpath kerb or gutter which do not alter its character;

“special assessment rate” means any instalment of any amount apportioned against and imposed on any rateable property under this Ordinance together with interest thereon.

Council empowered to require execution of works and levy special assessment rates.

17. Subject to the provisions of this Ordinance the Council may within such part of the municipal area as is within three miles of the Market Square apportion street works and the expenses of executing the same against rateable property situated within such part of the municipal area aforesaid and require the owners of such property to execute the apportioned works within a time to be specified and in the event of their making default levy special assessment rates on such property in the manner provided in this Ordinance.

Preparation of scheme by Town Engineer and Town Treasurer.

18. If it shall appear to the Council either on considerations of public interest or on petition from the owners of rateable property in any street or area affected that the execution of any street works is prima facie desirable the Council shall instruct the Town Engineer and the Town Treasurer hereinafter collectively referred to as the Assessors to prepare a scheme consisting of the following matters:—

(1) A specification of the works the execution of which it is proposed to require or the expenses of executing which it is proposed to recover under this Ordinance with plans and sections (if applicable).

(2) An estimate of the probable expense of the works.

(3) A provisional apportionment consisting of two parts;
(a) an apportionment of such works and of the expenses of executing the same against the pieces of land liable to such apportionment;

(b) a further apportionment against the different interests in any piece of land of the amount of expenses apportioned against such land;

and comprising the particulars prescribed in the second schedule hereto.

The estimate of the expenses of executing any street works prepared by the Assessors shall include such a proportion of the establishment charges of the Town Engineer's Department as is in the opinion of the Assessors reasonably chargeable against such works.

Assessors to have power of entry and inspection.

19. (1) The Assessors or any person duly authorized by them in writing shall for the purpose of preparing any such scheme as aforesaid have power to enter at all reasonable hours in the day time into and upon any land against which it is proposed to make any apportionment in such scheme and

shall also have power to inspect and make extracts from all registers or other records or any deeds or instruments belonging to or in the custody or possession of any Government official or any person in which are contained particulars of any such land or of any interest therein whether such person is or is not interested in such land. Any person who shall wilfully obstruct the Assessors or any person as aforesaid from exercising the powers conferred on them under this section shall be liable to the penalties in the next succeeding sub-section provided.

(2) The Assessors shall be entitled to call upon the owner of any interest in or occupier of any land for such written particulars in regard to such land as may be necessary for enabling them to prepare any such scheme as aforesaid and any owner or occupier who shall neglect within fourteen days after being called upon as aforesaid to supply such written particulars when called upon to do so shall be liable to a penalty not exceeding twenty pounds in respect of each offence and any person who shall furnish to the Assessors a false statement of any particulars asked for by them shall be liable upon conviction to a penalty not exceeding fifty pounds in respect of each offence.

20. In any provisional apportionment of street works and of the expenses of executing the same such works and expenses shall be apportioned against the pieces of land fronting adjoining or abutting upon the street or part of a street in which the works are to be executed or in respect of which the expenses are to be incurred according to the frontage of the respective pieces of land provided however that in settling the apportionment the Assessors may if they think just have regard to the following considerations that is to say,

- (a) the greater or lesser degree of benefit to be derived by any piece of land from such works;
- (b) the amount and value of any such works already done by the owners of interests in or occupiers of any such land.

They may also if they think just include any pieces of land which do not front adjoin or abut upon the street or part of a street but access to which is obtained from the street through or by means of any side street court passage or otherwise and which in their opinion will be benefited by the works and may fix the extent of the works or the amount of the expenses to be apportioned against such pieces of land accordingly.

21. The total amount of expenses apportioned against any piece of land shall again be apportioned against the different interests therein pro rata according to the values of such interests and if there shall be only one interest therein the whole amount shall be apportioned against the value of such interest. For the purpose of the apportionment in this section mentioned the values of the different interests shall be arrived at as follows:—

Method of apportioning works and expenses against pieces of land.

Method of apportioning expenses as between different interests in any piece of land.

(a) The value of any rateable interest shall be the value of such interest as appearing in the Valuation Roll for the time being in force; provided that in the case of any rateable interest which is not separately valued in the Valuation Roll the value of such interest shall be fixed by the Assessors by taking a proportion of the total value as appearing in the Valuation Roll of the rateable property in which such interest is included;

(b) the value of any exempted interest shall be estimated by the Assessors in the same manner as if they were valuers valuing such interest under the Local Authorities Rating Ordinance 1903.

Notice of
preparation
of scheme.

22. When the Assessors shall have completed the preparation of any scheme under section *eighteen* of this Ordinance a notice stating that the same has been prepared and giving short particulars of the works the execution of which it is proposed to require or the expenses of which it is proposed to recover by means of special assessment rates and of the street or part of a street affected thereby shall be published daily in six issues of a local paper and copies of such notice shall be posted up in one or more conspicuous places in the street or part of a street affected thereby within seven days after the date of the first publication.

During a period of not less than two months from the date of the first publication the specification plans and sections if any the estimate of expenses and the provisional apportionment prepared in connection with any such scheme or copies thereof certified by the Town Engineer shall be kept and deposited at the offices of the Council and shall be open to inspection at all reasonable times.

If owners
liable to be
charged with
two-thirds
of total
expenses
petition for
abandonment
of scheme
Council may
not proceed.

23. If at any time during the said two months or such longer period as may be fixed by the Council the owners of rateable interests shown in the provisional apportionment in connection with such scheme as liable to be charged with two-thirds of the total amount of expenses thereunder shall sign and cause to be forwarded to the Town Clerk a petition to the Council praying that such scheme may be entirely abandoned it shall not be lawful for the Council to proceed further therewith but such scheme shall forthwith be abandoned and shall not be considered by the Assessment Court hereinafter mentioned and the Council shall not authorize the preparation of a new scheme under this Ordinance in respect of the street works included in such abandoned scheme until after the expiration of six months from the date when such petition for abandonment is received by the Town Clerk.

Objections
by owners of
interests in
any piece of
land included
in apportion-
ment.

24. During the said two months or such longer period as may be fixed by the Council any owner of any rateable interest in any piece of land against which any works and expenses have been apportioned in the provisional apportionment may by written notice served upon the Council in the form as near as may be set forth in the Third Schedule

hereto object to the scheme prepared by the Assessors on any one or more of the following grounds that is to say

- (1) that there has been some material informality defect or error in respect of the notice or preparation of the scheme;
- (2) that the total amount of the expenses is excessive;
- (3) that any piece of land ought to be excluded from or inserted in the provisional apportionment;
- (4) that the provisional apportionment is incorrect in respect of some matter of fact to be specified in the objection or (where the provisional apportionment against any piece of land is made with regard to other considerations than frontage as hereinbefore provided) in respect of the degree of benefit to be derived by any piece of land or the amount of value of any work already done by the owner of an interest in or occupier of any land;
- (5) that the value of any interest in land included in the apportionment as fixed or estimated by the Assessors is too high or too low;
- (6) that the time allowed for the execution of the works apportioned against any piece of land is too short;
- (7) that the proposed works are insufficient;
- (8) that the proposed works are having regard to the circumstances and position of the locality unnecessary or unreasonable.

No person shall save as hereinafter mentioned be entitled to urge any objection to any scheme before the Assessment Court hereinafter referred to or before any Court unless he shall have first served on the Council such notice of objection as aforesaid.

25. (1) The Council shall from time to time appoint an Assessment Court to consider any schemes prepared under this Ordinance and any objections thereto; provided that no scheme shall be considered by such Court until after the expiration of the said two months or longer period as aforesaid. The Assessment Court shall consist of not less than three and not more than five persons who may or may not be members of the Council and shall hold office for such period as the Council may decide. Such persons shall appoint a President from among themselves and the Council shall appoint some person to act as clerk to the said Court.

Assessment
Court and its
proceedings.

(2) Such Court shall at meetings duly called by the Town Clerk proceed to consider any scheme prepared by the Assessors and any objections made thereto as aforesaid and may rescind in whole or in part and may subject to the provisions with regard to the preparation of any scheme and apportionment hereinbefore contained amend such scheme and any specification plan section estimate of expenses and provisional apportionment in connection with such scheme; provided always that in case any piece of land not included in the provisional apportionment is so included or in case the extent of the works or the amount of the expenses

apportioned against any piece of land or any interest therein in a provisional apportionment is increased by the decision of the said Court the Court shall cause notice to be served on the person or persons appearing to be directly affected thereby of the date of the sitting of the Court at which any proposal for such inclusion or increase will be considered not less than seven days before such date and such person or persons so affected may either forward to the President or Clerk of the Court in writing an objection before such date on any one or more of the grounds specified in the preceding section or present the same for consideration at such sitting and the Court shall duly hear and consider all such objections.

(3) At every sitting of such Court three members personally present shall constitute a quorum and the President thereof if present shall preside and if absent the members of the Court present shall elect a person from amongst themselves to act as President during such absence as aforesaid. All decisions of the Court shall be arrived at by the vote of a majority of the members personally present and in the case of an equality of votes the President or the member acting as such shall also have a casting vote.

(4) No person shall sit upon the hearing of any matter in which he shall be directly interested or concerned as being liable to execute any works or to pay any special assessment rate in question or any part thereof.

(5) In case for any reason there shall be a vacancy in such Court or any member shall be incapacitated from acting so that a quorum can not be formed the Council may at once without any notice appoint other persons temporarily or otherwise to fill up such vacancies or the places of the members incapable of acting.

(6) The Town Clerk by publication in one or more local papers shall give not less than seven days previous notice of the date fixed for the sitting of such court at which the consideration of any particular scheme will be first entered upon.

(7) At every sitting of such court the Council and any person who has lodged any objection to any scheme which is under consideration and any person who is the owner of any interest in any piece of land proposed for addition to or inclusion in any provisional apportionment or against which it is proposed to apportion a greater extent of works or a larger amount of expenses than was shown in the original scheme of the assessors may appear either in person or by counsel solicitor or admitted and licensed law agent or in the case of the Council by the Town Clerk or his deputy.

(8) At every sitting of such court it shall be competent for the court to call and examine any witnesses on oath and to call for the production of all such papers or documents as it may deem necessary.

(9) Such court shall keep a record of all its proceedings and a note of the objections and of the finding in regard to each objection and such court may in its discretion and shall at the

request of any party interested cause any deposition taken before it to be taken down in shorthand and signed by the deponent when transcribed and shall authenticate the same by the signature of the President as having been taken before such court and every such deposition so taken down and authenticated shall be deemed and taken to be good evidence in a prosecution for perjury.

(10) It shall be lawful for the Council to pay all such members of the court as are not members of the Council such remuneration as to the Council shall seem just.

26. When the Assessment Court has completed its examination of any scheme and any objections thereto and has made such amendments or alterations therein as it may deem necessary the President of the Court shall sign and certify such scheme and such scheme and the provisional apportionment included therein shall be deemed to become final upon the date when the same is so signed and certified.

Scheme to be signed and certified by President of Assessment Court and thereupon to become final.

27. The Town Clerk shall cause the date on which any scheme and apportionment have become final to be notified without delay either by advertisement in a local paper or by the serving of notices on the owners of rateable interests in any land affected thereby and any such advertisement or notice shall state that the owners of rateable interests in any piece of land against which works have been apportioned are required to execute such works and to notify to the Town Clerk their intention of so doing within the time hereinafter mentioned and that in default of such notification they will become liable to payment of special assessment rates as herein provided.

Notice to be given by Town Clerk when scheme has become final.

28. Any owner of a rateable interest in any piece of land who is willing to execute the works apportioned against such land shall within one month of the date upon which the apportionment becomes final notify the Town Clerk in writing as near as may be in the form contained in the fourth schedule hereto signed by him in the presence of a Justice of the Peace that it is his intention to carry out such works and if none of the owners of rateable interests in any piece of land give such notification within such period such owners shall be deemed to have made default and the Council may forthwith proceed itself to execute such works and the amounts of expenses apportioned against rateable interests in such land shall be recovered as hereinafter mentioned. The execution of any portion of any street works included in any scheme by the owner of any rateable interest shall not affect the amount of expenses apportioned against any other piece of land the owners of rateable interests in which have not executed the street works apportioned against such land.

Owner of rateable interest who is willing to execute work to notify Town Clerk within one month.

29. Where the owner of a rateable interest in any piece of land has notified the Town Clerk as aforesaid that he intends to execute the works apportioned against such land he shall execute the same within the time specified in the final apportionment in accordance with the plans and specifications contained in the scheme under the supervision of the Town

Execution of works by owner.

Engineer or his deputy and in accordance with any bye-laws or regulations made by the Council for the time being in force. The Town Engineer or his deputy shall as soon as possible after the date of such notification point out to such owner or his representatives on the ground the boundaries within which the work apportioned against such piece of land is to be executed and the decision of the Town Engineer with regard to any point which arises as to the meaning of the scheme or apportionment and the nature of the works to be executed shall be final. The Town Engineer shall further be authorized to make any adjustment of the portions of the street works to be executed by the owners of any rateable interests which may appear to him to be necessary for the more convenient execution thereof provided that no such adjustment shall increase the total estimated cost of the work apportioned against any piece of land.

Failure of owner to execute works after notifying intention.

30. If any owner who has notified his intention of executing the works apportioned against a piece of land in which he has a rateable interest shall fail to complete such works to the satisfaction of the Council within the time specified in the final apportionment the Council may at any time thereafter complete the same, and the cost of so doing shall be imposed as a charge on the rateable interest of the owner who has so made default to the exclusion of any other rateable interest in such land and shall be recoverable as a special assessment rate thereon which shall become due and payable in a single payment upon a date to be fixed by the Council and the Council shall not less than thirty days prior to such date serve notice thereof and of the amount of such charge on the owner of the rateable interest on which the same is imposed provided that the amount which may be recovered under this section shall in no case exceed the total amount of the expenses apportioned against all the interests in the piece of land in question; and provided further that if the notification referred to in section *twenty-eight* shall have been given in respect of any piece of land by two or more owners holding different rateable interests therein the amount chargeable on the interests of such owners in the event of default being made as in this section mentioned shall be apportioned by the assessors between such interests *pro rata* according to the values thereof as shown in the apportionment in connection with the scheme in which such works were included.

Council to execute works within reasonable time.

31. The Council shall within a reasonable time after it has been ascertained which owners have made default in executing any street works included in any scheme proceed to execute any such works the execution of which is not undertaken by the owners of interests in the land against which the same have been apportioned provided that in determining what shall be a reasonable time regard shall be had to all circumstances affecting the expediency or necessity of the works to be executed the greater or less amount of work being from time to time undertaken by the Council and the urgency or otherwise of the proposed works.

32. (1) When the street works included in any scheme which under the preceding section are required to be executed by the Council have been completed a certificate of such completion and of the cost of such works shall be signed by the assessors and such certificate shall be conclusive evidence for all purposes of the completion of such works and of the cost thereof and the date of such certificate shall be deemed to be the date of completion of such scheme.

Certificate to be given by assessors of completion of works and cost thereof and reduction to be made in amounts apportioned where cost less than estimate.

(2) In the event of the total cost of any street works so certified being less than the estimated cost thereof all the amounts shown in the final apportionment relating thereto as apportioned against the rateable interests in any land the owners of which have made default under section *twenty-eight* shall be proportionately reduced and such reductions shall be certified on such apportionment by the Town Treasurer.

33. (1) The amounts finally apportioned under any scheme against the rateable interests in any land the owners of which have made default under section *twenty-eight* shall be subject to any such reduction as is in the preceding section mentioned be imposed as a charge on such interests on the date of completion of such scheme together with interest thereon at the rate of eight per centum per annum as from such date and shall be paid and recovered in five annual instalments herein referred to as special assessment rates within a period of five years after such date.

Amounts apportioned subject to such reduction if any to be imposed as a charge on rateable interests and to be paid in instalments.

(2) Such instalments or special assessment rates shall become due and payable at intervals of not less than one year on dates to be fixed by the Council within such period of five years and the Town Clerk shall not less than thirty days prior to the date fixed for the payment of the first instalments of any such amounts as aforesaid notify such dates either by advertisement in a local paper or by serving notice in writing on the persons liable to pay such instalments or rates.

(3) The actual amount of the instalment or special assessment rate to be paid annually in respect of any rateable interest shall be ascertained by taking one equal fifth part of the capital sum charged on such interest and adding thereto one equal fifth part of the total interest which will accrue on such capital sum and its balance as reduced from time to time during the whole period over which the instalments are spread.

(4) Any owner of rateable property may at any time make a present payment of all instalments owing on such property and the Council shall thereupon grant him a rebate in respect of the payment of the instalments thereafter falling due to the extent of the interest included therein in respect of such part of the period over which the instalments are spread as remains unexpired at the date of payment the interest being reckoned at the rate of eight per centum per annum.

34. The person who is the owner of any rateable property shall be liable for the payment of the amount of any special assessment rates due thereon and in case of joint owners of rateable property they shall be jointly and severally liable for

Owner liable for any special assessment rate due.

the payment of such special assessment rates provided that in the case of the owner being absent from the Colony the agent or person receiving the rent of such property shall be liable.

Payment and recovery of special assessment rates.

35. Subject to the provisions of this Ordinance each special assessment rate shall be paid enforced and recovered in the same manner as if the same were a rate imposed on rateable property under the Local Authorities Rating Ordinance 1903 and all the provisions of sections *eighteen nineteen twenty twenty-one twenty-two* and *twenty-four* of such last-mentioned Ordinance with respect to the payment enforcement and recovery of rates and interest thereon to the proceedings for such recovery and to the evidence to be used in such proceedings shall *mutatis mutandis* apply to special assessment rates under this Ordinance and the receipt or certificate required to be produced under section *twenty-six* of the Local Authorities Rating Ordinance 1903 before transfer or cession of any rateable property is passed shall certify that all special assessment rates if any which have fallen due in respect of such property have been paid.

When special assessment rate may be recovered from occupier.

36. When any special assessment rate for the payment of which the owner of any rateable property is liable shall remain unpaid for a period of three months after the date on which such rate shall have been fixed to become due and payable the Council may at any time within twelve months after such date demand the amount of such special assessment rate or any part thereof from any tenant or occupier for the time being of the land in respect of which the rate is imposed and on non-payment thereof may after one month from the date of such demand recover the same from such tenant or occupier in the same manner as though he were the owner provided that the amount which may be recovered from any tenant or occupier under this section shall in no case exceed the total amount of any rent which may then be due and may thereafter become due in respect of such land by such tenant or occupier to such owner or his successors in title and that the same shall be recoverable by the Council from such tenant or occupier as such rent falls due from time to time. And every such tenant or occupier shall be entitled to deduct from any rent or other amount payable by him to such owner or his successors in title so much as was so paid by or recovered from him and the production of the receipts for such special assessment rates so paid by or recovered from such tenant or occupier shall be a good and sufficient discharge for the amount so paid or recovered as payment of rent or other amount.

Correction of errors reapportionment of works or expenses and amendment of specifications.

37. The Council may after any provisional apportionment has become final and at any time before all the works apportioned thereby have been completed or all special assessment rates chargeable thereunder have been paid instruct the Assessors

(a) to correct any clerical error that has been made in such apportionment; or

(b) to re-apportion any of the works apportioned against any piece of land which has been sub-divided and the expenses thereof according to the sub-divisions and the values of the interests therein as appearing in the valuation roll for the time being in force or in the case of interest not separately valued or of exempted interests as fixed or estimated by the Assessors in accordance with section *twenty-one* hereof; or

(c) to re-apportion the expenses apportioned against the interests in any piece of land in any case in which such interests or the values thereof have been altered or any new interest has been created therein according to the values of such interests as appearing in the valuation roll for the time being in force or in the case of interest not separately valued or of exempted interests as fixed or estimated by the Assessors in accordance with section *twenty-one* hereof; or

(d) to amend the specifications plans and sections if any and estimates relating to such scheme if such amendment appears necessary for the better execution of the works included in such scheme.

And it shall be lawful for the Council to require the execution of any works in respect of which default has not been made or to execute any works in respect of which default has been made and to recover any special assessment rate which is unpaid in accordance with any such correction re-apportionment or amendment but any extra expense caused by such amendment shall be borne by the Council. No such correction re-apportionment or amendment shall be subject to any objection or be considered by any Assessment Court under this Ordinance but any special assessment rate the amount of which is altered by any such correction or re-apportionment shall not become due and payable until thirty days' notice of the altered amount has been served on the person liable to pay the same.

38. No scheme or apportionment framed under this Ordinance which has become final and been duly certified shall be rendered void or affected by reason of any mistake or variance in the description of any land or interest in land or the name of any owner thereof.

Scheme not to be rendered void by mistake.

39. The proceeds of the special assessment rates imposed under this Ordinance shall be applied in and towards the execution of the street works in respect of which such rates were imposed and towards the replacement of any sums expended by the Council upon such works.

Application of proceeds of special assessment rates.

40. The Council may contribute out of its general funds (a) the amount of expenses apportioned under this Ordinance against any exempted interest and (b) such further sum towards the expenses of executing any street works which are the subject of a scheme under this Ordinance as to it shall seem fit and nothing in this Ordinance contained shall be deemed to prohibit the Council from executing any street works at its own expense.

Council may contribute proportion of expenses or may execute works at its own expense.

Notices.

41. Where any notice is required by this Ordinance to be served on any person it shall be served either personally on such person or left at his last usual place of abode or sent by registered letter to his postal address and in case any such person shall be absent from this Colony or cannot after reasonable enquiry be found any such notice shall be served in the manner aforesaid on any agent of such person who shall have registered his name and address in a register of agents to be kept by the Council for the purpose of notices under this Ordinance and if there shall be no registered agent shall be published in the *Gazette* or in one local paper and left with the Registrar of Deeds or the Registrar of Mining Rights as the case may require.

FIRST SCHEDULE.

Persons to whom leases may be granted under section *six* (b) of this Ordinance subject to the approval of the Lieutenant-Governor in connection with the settlement of claims for compensation under the Johannesburg Insanitary Area Expropriation Ordinance 1903 :—

Pearks' Stores (Africa) Limited.
 Norwegian African Company, Limited.
 The Trustees of the Ebenezer Independent Church.
 Messrs. Bain & Company, Limited.
 The Transvaal Cold Storage Company, Limited.

SECOND SCHEDULE.

Particulars to be comprised in a provisional apportionment of street works and of the expenses of executing the same.

PART I.

(a) The nature and extent of the works which the owners of interests in the respective pieces of land are required to execute and as near as may be the exact situation of such works.

(b) The time within which the execution of the works apportioned against any piece of land must be completed reckoned from the date when the apportionment becomes final.

(c) The amounts which will be charged upon the respective pieces of land in default of such execution.

(d) The measurements of the frontages and the other considerations if any upon which the apportionment is based.

PART II.

(a) The name of each owner or reputed owner of any interest in any piece of land against which any works and expenses are apportioned.

(b) The nature and value of each such interest.

(c) The share of the total expenses apportioned against each such interest.

THIRD SCHEDULE.

FORM OF OBJECTION TO SCHEME PREPARED BY ASSESSORS
 UNDER JOHANNESBURG MUNICIPAL ORDINANCE, 1905, PART III.
 TO THE TOWN CLERK,

MUNICIPAL OFFICES, JOHANNESBURG.

Scheme for Street Works, No., relating to Street Works
 in

(Here specify one or more of
 the streets included in the
 Scheme.)

 Name of Objector.

 Description of piece of land
 included in apportionment
 in which Objector has
 rateable interest.

Nature of interest (Freehold,
Leasehold or otherwise).

Total amount apportioned
against such interest.

I HEREBY OBJECT TO THE SCHEME ABOVE SPECIFIED ON THE FOLLOWING
GROUNDS :—

*The Objector must here specify on which of the grounds of objection men-
tioned in section twenty-four of the Ordinance he relies, and must
give sufficient particulars of each objection.*

- 1.
- 2.
- 3.

I ASK THAT THE SAID SCHEME MAY BE AMENDED IN THE FOLLOWING PARTI-
CULARS :—

*If the Objector wishes the Scheme to be rescinded, the words "amended
in the following particulars" may be struck out and the word
"rescinded" substituted.*

*The Objector may here state what alterations he considers should be made
in the Scheme.*

- 1.
- 2.
- 3.

Signature of Objector,

Date.....day of.....19.....

FOURTH SCHEDULE.

FORM OF NOTIFICATION TO COUNCIL OF INTENTION TO EXECUTE
STREET WORKS.—JOHANNESBURG MUNICIPAL ORDINANCE,
1905, PART III.

To THE TOWN CLERK,

MUNICIPAL OFFICES, JOHANNESBURG.

Scheme for Street Works No....., relating to Street Works
in.....

(Here specify one or more of
the streets included in
the Scheme.)

Name in full of Owner of
rateable interest who gives
notification.

Description of piece of land
included in apportionment
in which such Owner has
rateable interest.

Nature of such interest
(freehold, leasehold, or
otherwise).

*I, as owner of a rateable interest in the piece of land above described, hereby
notify to the Town Council of Johannesburg that it is my intention to execute the
street works apportioned against the said piece of land under the Scheme above
specified.*

Signature of Owner.....

Signed this.....of....., 19....., in the
presence of

Justice of the Peace.

1906.

No. 1 of 1906.] [Promulgated 13th July, 1906.

AN ORDINANCE

TO APPLY THE FOREIGN ENLISTMENT ACT 1870 OF THE IMPERIAL
PARLIAMENT TO THIS COLONY.

Assented to 4th July, 1906.

WHEREAS doubts have arisen whether the Foreign Enlistment Act 1870 extends to such territories as became part of the dominions of the Crown subsequent to the passing of such Act;

And whereas the Transvaal became part of the dominions of the Crown on the first day of September 1900;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Foreign
Enlistment
Act 1870
declared to
apply to this
Colony.
Title.

1. The Act of the Imperial Parliament known as the "Foreign Enlistment Act 1870" the terms of which are set forth in the Schedule hereto is hereby declared to extend to the Transvaal and shall come into operation therein on a date to be fixed by Proclamation of the Governor in the *Gazette*.*

2. This Ordinance may be cited for all purposes as the Foreign Enlistment Act 1870 (Application to Colony) Ordinance 1906.

SCHEDULE.

An Act of the Imperial Parliament to regulate the conduct of Her Majesty's subjects during the existence of hostilities between Foreign States with which Her Majesty is at peace. (9th August, 1870.)

Whereas it is expedient to make provision for the regulation of the conduct of Her Majesty's subjects during the existence of hostilities between Foreign States with which Her Majesty is at peace;

Be it enacted by the Queen's Most Excellent Majesty by and with the consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows:—

Preliminary.

Short title
of Act.
Application
of Act.
Commence-
ment of Act.

1. This Act may be cited for all purposes as "The Foreign Enlistment Act 1870."

2. This Act shall extend to all the dominions of Her Majesty including the adjacent territorial waters.

3. This Act shall come into operation in the United Kingdom immediately on the passing thereof and shall be proclaimed in every British possession by the Governor thereof as soon as may be after he receives notice of this Act and shall come into operation in that British possession on the day of such proclamation and the time at which this Act comes into operation in any place is as respects such place in this Act referred to as the commencement of this Act.

* See Proc. (Admn.) No. 84 of 1906 (*Gazette*, 28/9/06, p. 713), putting the Act into operation on 1st October, 1906; see also Proc. (Admn.) No. 10 of 1904.

Illegal Enlistment.

4. If any person without the licence of Her Majesty being a British subject within or without Her Majesty's dominions accepts or agrees to accept any commission or engagement in the military or naval service of any foreign state at war with any foreign state at peace with Her Majesty and in this Act referred to as a friendly state or whether a British subject or not within Her Majesty's dominions induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign state as aforesaid he shall be guilty of an offence against this Act and shall be punishable by fine and imprisonment or either of such punishments at the discretion of the court before which the offender is convicted; and imprisonment if awarded may be either with or without hard labour.

Penalty on enlistment in service of foreign state.

5. If any person without the licence of Her Majesty being a British subject quits or goes abroad any ship with a view of quitting Her Majesty's dominions with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state or whether a British subject or not within Her Majesty's dominions induces any other person to quit or to go on board any ship with a view of quitting Her Majesty's dominions with the like intent he shall be guilty of an offence against this Act and shall be punishable by fine and imprisonment or either of such punishments at the discretion of the court before which the offender is convicted and imprisonment if awarded may be either with or without hard labour.

Penalty on leaving Her Majesty's dominions with intent to serve a foreign state.

6. If any person induces any other person to quit Her Majesty's dominions or to embark on any ship within Her Majesty's dominions under a misrepresentation or false representation of the service in which such person is to be engaged with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state he shall be guilty of an offence against this Act and shall be punishable by fine and imprisonment or either of such punishments at the discretion of the court before which the offender is convicted; and imprisonment if awarded may be either with or without hard labour.

Penalty on embarking persons under false representations as to service.

7. If the master or owner of any ship without the licence of Her Majesty knowingly either takes on board or engages to take on board or has on board such ship within Her Majesty's dominions any of the following persons in this Act referred to as illegally enlisted persons: that is to say

Penalty on taking illegally enlisted persons on board ship.

- (1) Any person who being a British subject within or without the dominions of Her Majesty has without the licence of Her Majesty accepted or agreed to accept any commission or engagement in the military or naval service of any foreign state at war with any friendly state;
- (2) Any person being a British subject who without the licence of Her Majesty is about to quit Her Majesty's dominions with intent to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state;
- (3) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign state at war with a friendly state;

Such master or owner shall be guilty of an offence against this Act and the following consequences shall ensue; that is to say

- (1) The offender shall be punishable by fine and imprisonment or either of such punishments at the discretion of the court before which the offender is convicted; and imprisonment if awarded may be either with or without hard labour; and
- (2) Such ship shall be detained until the trial and conviction or acquittal of the master or owner and until all penalties inflicted on the master or owner have been paid or the master or owner has given security for the payment of such penalties to the satisfaction of two justices of the peace or other magistrate or magistrates having the authority of two justices of the peace; and
- (3) All illegally enlisted persons shall immediately on discovery of the offence be taken on shore and shall not be allowed to return to the ship.

Illegal Shipbuilding and Illegal Expeditions.

8. If any person within Her Majesty's dominions without the licence of Her Majesty does any of the following acts; that is to say

Penalty on illegal shipbuilding and illegal expeditions.

- (1) Builds or agrees to build or causes to be built any ship with intent or

Foreign Enlistment Act 1870
(*Application to Colony*).

A.D. 1906.]

[Ord. No. 1.

knowledge or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state; or

(2) Issues or delivers any commission for any ship with intent or knowledge or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state; or

(3) Equips any ship with intent or knowledge or having a reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state; or

(4) Despatches or causes or allows to be despatched any ship with intent or knowledge or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign state at war with any friendly state :

Such person shall be deemed to have committed an offence against this Act and the following consequences shall ensue :

(1) The offender shall be punishable by fine and imprisonment or either of such punishments at the discretion of the court before which the offender is convicted; and imprisonment if awarded may be either with or without hard labour;

(2) The ship in respect of which any such offence is committed and her equipment shall be forfeited to Her Majesty :

Provided that a person building causing to be built or equipping a ship in any of the cases aforesaid in pursuance of a contract made before the commencement of such war as aforesaid shall not be liable to any of the penalties imposed by this section in respect of such building or equipping if he satisfies the conditions following; that is to say

(1) If forthwith upon a proclamation of neutrality being issued by Her Majesty he gives notice to the Secretary of State that he is so building causing to be built or equipping such ship and furnishes such particulars of the contract and of any matters relating to or done or to be done under the contract as may be required by the Secretary of State :

(2) If he gives such security and takes and permits to be taken such other measures if any as the Secretary of State may prescribe for ensuring that such ship shall not be despatched delivered or removed without the licence of Her Majesty until the termination of such war as aforesaid.

Presumption as to evidence in case of illegal ship.

9. Where any ship is built by order of or on behalf of any foreign state when at war with a friendly state or is delivered to or to the order of such foreign state or any person who to the knowledge of the person building is an agent of such foreign state or is paid for by such foreign state or such agent and is employed in the military or naval service of such foreign state such ship shall until the contrary is proved be deemed to have been built with a view to being so employed and the burden shall lie on the builder of such ship of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign state.

Penalty on aiding the warlike equipment of foreign ships.

10. If any person within the dominions of Her Majesty and without the licence of Her Majesty--

By adding to the number of the guns or by changing those on board for other guns or by the addition of any equipment for war increases or augments or procures to be increased or augmented or is knowingly concerned in increasing or augmenting the warlike force of any ship which at the time of her being within the dominions of Her Majesty was a ship in the military or naval service of any foreign state at war with any friendly state--

Such person shall be guilty of an offence against this Act and shall be punishable by fine and imprisonment or either of such punishments at the discretion of the court before which the offender is convicted; and imprisonment if awarded may be either with or without hard labour.

Penalty on fitting out naval or military expeditions without licence.

11. If any person within the limits of Her Majesty's dominions and without the licence of Her Majesty--

Prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state the following consequences shall ensue :

(1) Every person engaged in such preparation or fitting out or assisting therein or employed in any capacity in such expedition shall be guilty of an offence against this Act and shall be punishable by fine and imprisonment

Foreign Enlistment Act 1870
(*Application to Colony*).

Ord. No. 1.]

[A.D. 1906.]

or either of such punishments at the discretion of the court before which the offender is convicted; and imprisonment if awarded may be either with or without hard labour.

(2) All ships and their equipments and all arms and munitions of war used in or forming part of such expedition shall be forfeited to Her Majesty.

12. Any person who aids abets counsels or procures the commission of any offence against this Act shall be liable to be tried and punished as a principal offender. Punishment of accessories.

13. The term of imprisonment to be awarded in respect of any offence against this Act shall not exceed two years. Limitation of term of imprisonment.

Illegal Prize.

14. If during the continuance of any war in which Her Majesty may be neutral any ship goods or merchandise captured as prize of war within the territorial jurisdiction of Her Majesty in violation of the neutrality of this realm or captured by any ship which may have been built equipped commissioned or despatched or the force of which may have been augmented contrary to the provisions of this Act are brought within the limits of Her Majesty's dominions by the captor or any agent of the captor or by any person having come into possession thereof with knowledge that the same was prize of war so captured as aforesaid it shall be lawful for the original owner of such prize or his agent or for any person authorised in that behalf by the Government of the foreign state to which such owner belongs to make application to the Court of Admiralty for seizure and detention of such prize and the court shall on due proof of the facts order such prize to be restored. Illegal prize brought into British ports restored.

Every such order shall be executed and carried into effect in the same manner and subject to the same right of appeal as in case of any order made in the exercise of the ordinary jurisdiction of such court; and in the meantime and until a final order has been made on such application the court shall have power to make all such provisional and other orders as to the care or custody of such captured ship goods or merchandise and (if the same be of perishable nature or incurring risk of deterioration) for the sale thereof and with respect to the deposit or investment of the proceeds of any such sale as may be made by such court in the exercise of its ordinary jurisdiction.

General Provision.

15. For the purpose of this Act a licence by Her Majesty shall be under the sign manual of Her Majesty or be signified by Order in Council or by proclamation of Her Majesty. Licence by Her Majesty: how granted.

Legal Procedure.

16. Any offence against this Act shall for all purposes of and incidental to the trial and punishment of any person guilty of any such offence be deemed to have been committed either in the place in which the offence was wholly or partly committed or in any place within Her Majesty's dominions in which the person who committed such offence may be. Jurisdiction in respect of offences by persons against Act.

17. Any offence against this Act may be described in any indictment or other document relating to such offence in cases where the mode of trial requires such a description as having been committed at the place where it was wholly or partly committed or it may be averred generally to have been committed within Her Majesty's dominions and the venue or local description in the margin may be that of the county city or place in which the trial is held. Venue in respect of offences by persons.

18. The following authorities that is to say in the United Kingdom any judge of a superior court in any other place within the jurisdiction of any British court of justice such court or if there are more courts than one the court having the highest criminal jurisdiction in that place may by warrant or instrument in the nature of a warrant in this section included in the term "warrant" direct that any offender charged with an offence against this Act shall be removed to some other place in Her Majesty's dominions for trial in cases where it appears to the authority granting the warrant that the removal of such offender would be conducive to the interests of justice and any prisoner so removed shall be triable at the place to which he is removed in the same manner as if his offence had been committed at such place. Power to remove offenders for trial.

Any warrant for the purposes of this section may be addressed to the master of any ship or to any other person or persons and the person or persons to whom such warrant is addressed shall have power to convey the prisoner therein named

to any place or places named in such warrant and to deliver him when arrived at such place or places into the custody of any authority designated by such warrant.

Every prisoner shall during the time of his removal under any such warrant as aforesaid be deemed to be in the legal custody of the person or person empowered to remove him.

Jurisdiction
in respect of
forfeiture of
ships for
offences
against Act.

19. All proceedings for the condemnation and forfeiture of a ship or ship and equipment or arms and munitions of war in pursuance of this Act shall require the sanction of the Secretary of State or such chief executive authority as is in this Act mentioned and shall be had in the Court of Admiralty and not in any other court; and the Court of Admiralty shall in addition to any power given to the court by this Act have in respect of any ship or other matter brought before it in pursuance of this Act all powers which it has in the case of a ship or matter brought before it in the exercise of its ordinary jurisdiction.

Regulations
as to proceed-
ings against
the offender
and against
the ship.

20. Where any offence against this Act has been committed by any person by reason whereof a ship or ship and equipment or arms and munitions of war has or have become liable to forfeiture proceedings may be instituted contemporaneously or not as may be thought fit against the offender in any court having jurisdiction of the offence and against the ship or ship and equipment or arms and munitions of war for the forfeiture in the Court of Admiralty; but it shall not be necessary to take proceedings against the offender because proceedings are instituted for the forfeiture or to take proceedings for the forfeiture because proceedings are taken against the offender.

Officers
authorised to
seize
offending
ships.

21. The following officers that is to say

(1) Any officer of the customs in the United Kingdom subject nevertheless to any special or general instructions from the Commissioners of Customs or any officer of the Board of Trade subject nevertheless to any special or general instructions from the Board of Trade;

(2) Any officer of customs or public officer in any British possession subject nevertheless to any special or general instructions from the governor of such possession;

(3) Any commissioned officer on full pay in the military service of the Crown subject nevertheless to any special or general instructions from his commanding officer;

(4) Any commissioned officer on full pay in the naval service of the Crown subject nevertheless to any special or general instructions from the Admiralty or his superior officer;

may seize or detain any ship liable to be seized or detained in pursuance of this Act and such officers are in this Act referred to as the "local authority"; but nothing in this Act contained shall derogate from the power of the Court of Admiralty to direct any ship to be seized or detained by any officer by whom such court may have power under its ordinary jurisdiction to direct a ship to be seized or detained.

Powers of
officers to
seize ships.

22. Any officer authorised to seize or detain any ship in respect of any offence against this Act may for the purpose of enforcing such seizure or detention call to his aid any constable or officers of police or any officers of Her Majesty's army or navy or marines or any excise officers or officers of customs or any harbour-master or dock-master or any officers having authority by law to make seizures of ships and may put on board any ship so seized or detained any one or more of such officers to take charge of the same and to enforce the provisions of this Act and any officer seizing or detaining any ship under this Act may use force if necessary for the purpose of enforcing seizure or detention and if any person is killed or maimed by reason of his resisting such officer in the execution of his duties or any person acting under his orders such officer so seizing or detaining the ship or other person shall be freely and fully indemnified as well as against the Queen's Majesty her heirs and successors as against all persons so killed maimed or hurt.

Special power
of Secretary
of State or
chief execu-
tive authority
to detain ship.

23. If the Secretary of State or the chief executive authority is satisfied that there is a reasonable and proper cause for believing that a ship within Her Majesty's dominions has been or is being built commissioned or equipped contrary to this Act and is about to be taken beyond the limits of such dominions or that a ship is about to be despatched contrary to this Act such Secretary of State or chief executive authority shall have power to issue a warrant stating that there is reasonable and probable cause for believing as aforesaid and upon such warrant the local authority shall have power to seize and search such ship and to detain the same until it has been either condemned or released by process of law or in manner hereinafter mentioned.

Foreign Enlistment Act 1870
(*Application to Colony*).

Ord. No. 1.]

[A.D. 1906.]

The owner of the ship so detained or his agent may apply to the Court of Admiralty for its release and the court shall as soon as possible put the matter of such seizure and detention in course of trial between the applicant and the Crown.

If the applicant establish to the satisfaction of the court that the ship was not and is not being built commissioned or equipped or intended to be despatched contrary to this Act the ship shall be released and restored.

If the applicant fail to establish to the satisfaction of the court that the ship was not and is not being built commissioned or equipped or intended to be despatched contrary to this Act then the ship shall be detained till released by order of the Secretary of State or chief executive authority.

The court may in cases where no proceedings are pending for its condemnation release any ship detained under this section on the owner giving security to the satisfaction of the court that the ship shall not be employed contrary to this Act notwithstanding that the applicant may have failed to establish to the satisfaction of the court that the ship was not and is not being built commissioned or intended to be despatched contrary to this Act. The Secretary of State or the chief executive authority may likewise release any ship detained under this section on the owner giving security to the satisfaction of such Secretary of State or chief executive authority that the ship shall not be employed contrary to this Act or may release the ship without giving such security if the Secretary of State or the chief executive authority think fit so to release the same.

If the court be of opinion that there was not reasonable and probable cause for the detention and if no such cause appear in the course of the proceedings the court shall have power to declare that the owner is to be indemnified by the payment of costs and damages in respect of the detention the amount thereof to be assessed by the court and any amount so assessed shall be payable by the Commissioners of the Treasury out of any moneys legally applicable for that purpose. The Court of Admiralty shall also have power to make a like order for the indemnity of the owner on the application of such owner to the court in a summary way in cases where the ship is released by the order of the Secretary of State or the chief executive authority before any application is made by the owner or his agent to the court for such release.

Nothing in this section contained shall affect any proceedings instituted or to be instituted for the condemnation of any ship detained under this section where such ship is liable to forfeiture subject to this provision that if such ship is restored in pursuance of this section all proceedings for such condemnation shall be stayed; and where the court declares that the owner is to be indemnified by the payment of costs and damages for the detainer all costs charges and expenses incurred by such owner in or about any proceedings for the condemnation of such ship shall be added to the costs and damages payable to him in respect of the detention of the ship.

Nothing in this section contained shall apply to any foreign non-commissioned ship despatched from any part of Her Majesty's dominions after having come within them under stress of weather or in the course of a peaceful voyage and upon which ship no fitting out or equipping of a warlike character has taken place in this country.

24. Where it is represented to any local authority as defined by this Act and such local authority believes the representation that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built commissioned or equipped contrary to this Act and is about to be taken beyond the limits of such dominions or that a ship is about to be despatched contrary to this Act it shall be the duty of such local authority to detain such ship and forthwith to communicate the fact of such detention to the Secretary of State or chief executive authority.

Special power of local authority to detain ship.

Upon the receipt of such communication the Secretary of State or chief executive authority may order the ship to be released if he thinks there is no cause for detaining her but if satisfied that there is reasonable and probable cause for believing that such ship was built commissioned or equipped or intended to be despatched in contravention of this Act he shall issue his warrant stating that there is reasonable and probable cause for believing as aforesaid and upon such warrant being issued further proceedings shall be had as in cases where the seizure or detention has taken place on a warrant issued by the Secretary of State without any communication from the local authority.

Foreign Enlistment Act 1870
(*Application to Colony*).

A.D. 1906.]

[Ord. No. 1.

Where the Secretary of State or chief executive authority orders the ship to be released on the receipt of a communication from the local authority without issuing his warrant the owner of the ship shall be indemnified by the payment of costs and damages in respect of the detention upon application to the Court of Admiralty in a summary way in like manner as he is entitled to be indemnified where the Secretary of State having issued his warrant under this Act releases the ship before any application is made by the owner or his agent to the court for such release.

Power of Secretary of State or executive authority to grant search warrant.

25. The Secretary of State or the chief executive authority may by warrant empower any person to enter any dockyard or other place within His Majesty's dominions and enquire as to the destination of any ship which may appear to him to be intended to be employed in the naval and military service of any foreign state at war with a friendly state and to search such ship.

Exercise of powers of Secretary of State or chief executive authority.

26. Any powers of jurisdiction by this Act given to the Secretary of State may be exercised by him throughout the dominions of Her Majesty and such powers and jurisdiction may also be exercised by any of the following officers in this Act referred to as the chief executive authority within their respective jurisdictions; that is to say

(1) In Ireland by the Lord-Lieutenant or other the chief governor or governors of Ireland for the time being or the chief secretary to the Lord-Lieutenant :

(2) In Jersey by the Lieutenant-Governor :

(3) In Guernsey Alderney and Sark and the dependent islands by the Lieutenant-Governor :

(4) In the Isle of Man by the Lieutenant-Governor :

(5) In any British possession by the Governor.

A copy of any warrant issued by a Secretary of State or by any officer authorised in pursuance of this Act to issue such warrant in Ireland the Channel Islands or the Isle of Man shall be laid before Parliament.

Appeal from Court of Admiralty.

27. An appeal may be had from any decision of a Court of Admiralty under this Act to the same tribunal and in the same manner to and in which an appeal may be had in cases within the ordinary jurisdiction of the court as a Court of Admiralty.

Indemnity to officers.

28. Subject to the provisions of this Act providing for the award of damages in certain cases in respect of the seizure or detention of a ship by the Court of Admiralty no damages shall be payable and no officer or local authority shall be responsible either civilly or criminally in respect of the seizure or detention of any ship in pursuance of this Act.

Indemnity to Secretary of State or chief executive authority.

29. The Secretary of State shall not nor shall the chief executive authority be responsible in any action or other legal proceedings whatsoever for any warrant issued by him in pursuance of this Act or be examinable as a witness except at his own request in any court of justice in respect of the circumstances which led to the issue of the warrant.

Interpretation Clause.

Interpretation of terms.

30. In this Act if not inconsistent with the context the following terms have the meanings hereinafter respectively assigned to them; that is to say

"Foreign state."

"Foreign state" includes any foreign prince colony province or part of any province or people or any person or persons exercising or assuming to exercise the powers of government in or over any foreign country colony province or part of any province or people :

"Military service."

"Military service" shall include military telegraphy and any other employment whatever in or in connection with any military operation :

"Naval service."

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"Naval service" shall as respects a person include service as a marine employment as a pilot in piloting or directing the course of a ship of war or other ship when such ship of war or other ship is being used in any military or naval operation and any employment whatever on board a ship of war transport store ship privateer or ship under letters of marque; and as respects a ship include any user of a ship as a transport store ship privateer or ship under letters of marque :

"United Kingdom."

"United Kingdom" includes the Isle of Man the Channel Islands and other adjacent islands :

- “British possession” means any territory colony or place being part of Her Majesty’s dominions and not part of the United Kingdom as defined by this Act: “British possession.”
- “The Secretary of State” shall mean any one of Her Majesty’s Principal Secretaries of State: “The Secretary of State.”
- “The Governor” shall as respects India mean the Governor-General or the Governor of any presidency and where a British possession consists of several constituent colonies and as respects any other British possession it shall mean the officer for the time being administering the government of such possession; also any person acting for or in the capacity of a governor shall be included under the term “Governor”: “Governor.”
- “Court of Admiralty” shall mean the High Court of Admiralty of England or Ireland the Court of Session of Scotland or any Vice-Admiralty Court within Her Majesty’s dominions: “Court of Admiralty.”
- “Ship” shall include any description of boat vessel floating battery or floating craft; also any description of boat vessel or other craft or battery made to move either on the surface of or under water or sometimes on the surface of and sometimes under water: “Ship.”
- “Building” in relation to a ship shall include the doing any act towards or incidental to the construction of a ship and all words having relation to building shall be construed accordingly: “Building.”
- “Equipping” in relation to a ship shall include the furnishing a ship with any tackle apparel furniture provisions arms munitions or stores or any other thing which is used in or about a ship for the purpose of fitting or adapting her for the sea or for naval service and all words relating to equipping shall be construed accordingly: “Equipping.”
- “Ship and equipment” shall include a ship and everything in or belonging to a ship: “Ship and equipment.”
- “Master” shall include any person having the charge or command of a ship. “Master.”

Repeal of Acts and Saving Clauses.

31. From and after the commencement of this Act an Act passed in the fifty-ninth year of the reign of His late Majesty King George the Third chapter sixty-nine intituled “An Act to prevent the enlisting or engagement of His Majesty’s subjects to serve in foreign service and the fitting out or equipping in His Majesty’s dominions vessels for warlike purposes without His Majesty’s licence” shall be repealed: Provided that such repeal shall not affect any penalty forfeiture or other punishment incurred or to be incurred in respect of any offence committed before this Act comes into operation nor the institution of any investigation or legal proceeding or any other remedy for enforcing any such penalty forfeiture or punishment as aforesaid. Repeal of Foreign Enlistment Act.

32. Nothing in this Act contained shall subject to forfeiture any commissioned ship of any foreign state or give to any British court over or in respect of any ship entitled to recognition as a commissioned ship of any foreign state any jurisdiction which it would not have had if this Act had not passed. Saving as to commissioned foreign ships.

33. Nothing in this Act contained shall extend or be construed to extend to subject to any penalty any person who enters into the military service of any prince state or potentate in Asia with such leave or licence as is for the time being required by law in the case of subjects of Her Majesty entering into the military service of princes states or potentates in Asia. Penalties not to extend to persons entering into military service in Asia.

No. 2 of 1906.]

[Promulgated 6th July, 1906.]

AN ORDINANCE

TO MAKE PROVISION FOR THE OBTAINING OF THE EVIDENCE OF PERSONS RESIDING IN THIS COLONY BY COURTS OF LAW IN NEIGHBOURING COLONIES AND TERRITORIES.

Assented to 4th July, 1906.

WHEREAS the testimony of persons residing in this Colony is frequently required in the courts of law of neighbouring Colonies and territories and it is necessary lest the ends of justice be defeated that provision should be made for compelling the attendance of such persons before the said courts or for their examination in this Colony by means of interrogatories;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

PART I.

Repeal of laws.

1. The laws mentioned in the Schedule hereto shall be and are hereby repealed but notwithstanding such repeal any tariff of witness expenses made for any Colony or Territory under any such law shall continue in force in respect of the Colony or Territory mentioned in such law until a tariff has been made under section *three* of this Ordinance in respect of such Colony or Territory.

Subpœna issued by court of Colony or Territory in South Africa and transmitted to a resident magistrate of this Colony for service in his district to be endorsed by such magistrate and served by messenger.

2. Whenever a subpœna purporting to be issued by the proper officer of a competent court in any Colony or Territory in South Africa to which this part of this Ordinance applies has been transmitted by such officer to the resident magistrate of any district in which there resides or is a person whose attendance is required as a witness in such court aforesaid it shall be the duty of such resident magistrate to endorse on the said subpœna his order that the same be served on the person named therein and the subpœna so endorsed shall thereupon be delivered to the messenger of the said magistrate's court or to such other person as the said resident magistrate shall specially appoint for the purpose and it shall be the duty of such messenger or other person to serve such subpœna as soon as practicable on the person named therein; provided always that the necessary expenses of such service and the necessary expenses to be incurred by the person subpœnaed in going to and returning from the court named in such subpœna and to be incurred during his detention at the place where his evidence is given shall have been transmitted to the said resident magistrate

together with the said subpœna; and provided further that the portion of the expenses aforesaid assigned to the person named in the said subpœna shall have been paid to him by the officer serving the same.

*3. The Lieutenant-Governor may from time to time make alter or rescind a tariff of such expenses as are mentioned in the last preceding section in respect of any Colony or Territory to which this part of this Ordinance applies.

Power to Lieutenant-Governor to make alter or rescind tariff of expenses.

4. Any person who shall have been served with such subpœna as in section *two* is provided and shall not have attended at the time and place mentioned therein shall be liable to a penalty not exceeding one hundred pounds unless he shall offer a valid and lawful excuse for such non-attendance; and every such penalty shall be recoverable in the court of resident magistrate in which he shall be residing at the instance of the Attorney-General.

Penalty for non-attendance of person subpœnaed and how recoverable.

5. The return of the person who under section *two* of this Ordinance is authorized to serve a subpœna showing that service has been duly made together with a certificate under the hand and seal of the presiding judge or magistrate of the court from which the said subpœna was issued showing that the person so served did not attend when called upon and did not establish any valid and lawful excuse for his default shall be deemed sufficient proof of such person's non-attendance for the purpose of enforcing the penalty in the last preceding section mentioned.

How non-attendance of person to be subpœnaed proved.

6. No person resident in any Colony or Territory to which this part of this Ordinance applies who may be summoned as a witness before any court of this Colony and whose attendance before such court shall be enforced by any law of such Colony or Territory shall be liable while so attending to be arrested upon any civil or criminal process for any debt formerly due or for any offence formerly committed by him in this Colony.

Privilege of freedom from arrest during attendance at court of neighbouring Colony.

PART II.

7. If any civil cause or matter be pending in a court of resident magistrate of any Colony or Territory in South Africa to which this part of this Ordinance applies and the resident magistrate of such court shall certify that the evidence of a person resident or being in this Colony is required in such cause or matter and shall transmit such certificate to the resident magistrate of the district in which such person resides or is together with any interrogatories duly and lawfully framed which it is desired to put to such person it shall be the duty of such last-mentioned magistrate upon receipt

Examination by interrogatories of persons whose evidence is required in civil cases in magistrates' courts in neighbouring Colonies.

(a) of such certificate and interrogatories;

(b) of the expenses payable to such person for his appearance as herein provided;

(c) of the amount payable in fees or stamps for the issue and service of the summons herein mentioned;

* For tariff see Govt. Notice No. 1009 of 1906 (*Gazette*, 5/10/06).

to summon such person to appear before him and upon such appearance to take the evidence of such person as if he were a witness in a civil case in the court of such magistrate and to put to such person the interrogatories aforesaid together with any other questions calculated to obtain full and true answers to such interrogatories and to take down or cause to be taken down the evidence so obtained and to transmit the same certified as correct to the resident magistrate in whose court such civil cause or matter is pending.

It shall further be the duty of the resident magistrate who has obtained such evidence to transmit to the resident magistrate in whose court the said cause or matter is pending a certificate showing the amount paid to the person aforesaid in respect of the expenses of appearance and the cost of the issue and service of any summons aforesaid.

*8. The Lieutenant-Governor may from time to time make alter and rescind a tariff of expenses payable to persons summoned before a resident magistrate under the provisions of the last preceding section and of the fees and stamps payable in respect of the issue and service of any such summons.

9. Any person required to appear before a resident magistrate under the provisions of section *seven* shall be summoned in like manner and be liable to like penalties in the event of his non-attendance as if he had been summoned to give evidence under the Magistrates' Court Proclamation 1902 or any amendment thereof or any regulations made thereunder.

10. Whenever under any law in force in any Colony or Territory of South Africa to which this part of this Ordinance applies the evidence of persons who reside or may be in such Colony or Territory has been taken by means of interrogatories for the purpose of using the same in any civil cause or matter pending in a court of resident magistrate in this Colony such evidence if certified by the proper officer as having been taken in accordance with the law of such Colony or Territory shall (subject to all lawful objections) be received as evidence in such civil cause or matter.

GENERAL.

11. (1) Part I of this Ordinance shall take effect so far as concerns any Colony or Territory in South Africa as soon as the Lieutenant-Governor shall by Proclamation in the *Gazette* declare that such Colony or Territory has made due provision to compel the attendance of persons resident in such Colony or Territory as witnesses before the courts of this Colony.†

(2) Part II of this Ordinance shall take effect so far as concerns any Colony or Territory in South Africa as soon as

* See Govt. Notice No. 1008 of 1906 (*Gazette*, 5/10/06) declaring that Resident Magistrate Court tariff in civil proceedings to apply to witnesses under this Ordinance.

† See Proc. (Admn.) No. 57 of 1906, declaring Part I of Ordinance to take effect so far as concerns Cape Colony, Orange River Colony, and Bechuanaland Protectorate; Proc. (Admn.) No. 85 of 1906, as concerns Basutoland; Proc. (Admn.) No. 102 of 1906, as concerns Natal.

Power to
Lieutenant-
Governor to
frame tariff
of expenses
and fees
for process.

Penalty on
person
summoned
for non-
attendance.

Interroga-
tories law-
fully taken
in Colonies
to which this
Part of this
Ordinance
applies
received as
evidence in
magistrates'
courts in
this Colony.

Taking effect
of either
Part of this
Ordinance.

the Lieutenant-Governor shall by Proclamation in the *Gazette* declare that such Colony or Territory has made due provision for taking by interrogatories the evidence of persons resident in such Colony or Territory when such evidence is required in civil cases in courts of this Colony.†

12. In this Ordinance the expressions “resident magistrate” and “magistrate” shall include an assistant resident magistrate and in the case of Territories in which the functions performed by resident magistrates and assistant resident magistrates in this Colony are in such Territories performed by resident commissioners or assistant commissioners shall include a “resident commissioner” and “assistant commissioner.”

Interpretation
of terms.

13. This Ordinance may be cited for all purposes as the Title.
Neighbouring Colonies Evidence Ordinance 1906.

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SCHEDULE.

- Law No. 2 of 1890.
- Law No. 3 of 1892.
- First Volksraad Resolution 11th May, 1894, Article 46.
- Law No. 9 of 1895.
- Law No. 10 of 1895.

† Sec Proc. (Admn.) No. 70 of 1906, declaring Part II of Ordinance to take effect so far as concerns Cape Colony, Natal, Orange River Colony, Southern Rhodesia, and Bechuanaland Protectorate; Proc. (Admn.) No. 28 of 1907, as concerns Swaziland.

No. 4 of 1906.]

[Promulgated 29th June, 1906.]

*AN ORDINANCE

TO AMEND THE CUSTOMS LAWS AND CUSTOMS TARIFF IN CERTAIN RESPECTS AND TO ALLOW THE DISTILLATION OF SPIRITS FROM THE PRODUCE OF THE VINE.

Assented to 28th June, 1906.

BE IT ENACTED by the Lieutenant-Governor of The Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Amendment
of existing
tariff.

1. On and after the date of the taking effect of this Ordinance except as is hereinafter provided there shall be raised levied and collected and paid upon such goods wares and merchandise imported and brought into this Colony as are described and set forth in Classes I II III IV and VI of the Schedule hereunto annexed the duties therein set forth.

Free list.

2. The goods wares and merchandise described and set forth in Class V of the said Schedule shall be admitted into this Colony free of duty.

Prohibition
of introduction
of
made goods.
Rebate of
portion of the
duties on
British goods.

3. The introduction of ~~prison and penitentiary made~~ goods into this Colony is prohibited.

4. A rebate of customs duties shall be granted on any goods and articles the growth produce or manufacture of the United Kingdom imported therefrom into this Colony for consumption therein to the extent following:—

(a) In the case of goods and articles charged with customs duty under Class I the amount shown in the column indicating such rebate:

(b) In the case of goods and articles charged under Classes II III IV and VI three per cent *ad valorem* on such goods and articles:

provided always that the manufactured goods and articles in respect of which such rebate as aforesaid shall be granted shall be bona fide the manufactures of the United Kingdom and that in the event of any question arising as to whether any goods or articles are entitled to any such rebate as aforesaid the decision of the Colonial Treasurer shall be final.

Similar rebate
in respect of
goods from
British
Colonies
granting
reciprocal
treatment.

5. A rebate similar to that for which provision is made in the last preceding section shall be granted in like manner and under like provisions to goods and articles the growth produce or manufacture of any British Colony Protectorate or Possession granting equivalent reciprocal privileges to the Colonies and Territories parties to the Customs Union Conven-

* See Act No. 6 of 1908.

tion; provided that no such rebate shall be granted in the case of any particular Colony Protectorate or Possession until on and after a date to be mutually agreed upon and publicly notified by the parties to the Convention.

6. Under such regulations as he may prescribe in that behalf the Lieutenant-Governor may in accordance with the provisions of the Customs Union Convention by Proclamation in the *Gazette**

Power of
Lieutenant-
Governor
to suspend
certain
duties by
Proclamation.

(a) suspend the duty imposed on fresh chilled and frozen meat and on animals for slaughter; provided that on the re-imposition of such duties all stocks on hand shall be regarded as if in bond and liable to the duties then in force;

†(b) grant a rebate of the whole or part of the duty on methylated spirits or alcohol of Union manufacture intended solely for manufacturing or scientific purposes, or for fuel or for export beyond the limits of this Colony, or which may have been destroyed by fire or other unavoidable accident, and on soap or other substances imported for and exclusively used in connection with the industry of woolwashing;

(c) allow either by free importation or rebate an abatement of the duties on articles imported by and for the use of members of His Majesty's regular forces and on wines and spirits for the use of the Governor or the Lieutenant-Governor;

†(d) allow the importation free of duty into this Colony of any goods and articles excepting spirits the growth, produce, or manufacture of the Portuguese Province of Mozambique; provided that the chief constituent of such goods are the products of the soil of the said Province;

‡(e) grant a rebate or refund of duty on any raw, semi-manufactured, or manufactured material used in the manufacture of any article in this Colony on its exportation to any place beyond the limits of the Customs Union.

7. Whenever any goods upon which the duties have been paid in this Colony shall be removed to and for consumption in any other Colony or Territory within the Customs Union there shall be payable to the Government of such Colony or Territory in the Union ninety-five per cent. of the Customs Union duties collected under this Ordinance on the said goods.

Payment of
share of
duties to other
consuming
Colonies in
the Union.

§8. For the purpose of estimating the amount of Customs duty whenever levied on goods ad valorem and the declaration and oaths which may be at any time required by law or regulation in relation to the question of such duty, the current value of such goods shall be taken to be the true current value for

Definition of
value on
which
ad valorem
duties are to
be paid.

* See Proc. (Admn.) No. 68 of 1908, suspending duty on meat and slaughter animals, and rebate on plain spirits the produce of the Union on the articles imported for the use of H.M. Regular Forces, and duties on wines and spirits imported for use of the Governor, and free importation of goods, excepting spirits, the produce of Mozambique; see Proc. (Admn.) No. 30 of 1910, regulations *re* custom duties on spirits.

† Sub-secs. (b) and (d) substituted by Act No. 6 of 1908, sec. 1.

‡ Sub-sec. (e) added by Act No. 6 of 1908, sec. 1.

§ This section substituted by Act No. 6 of 1908, sec. 2.

home consumption in the open market for similar goods at the place of purchase, bought in the ordinary manner from the manufacturer or supplier in normal quantities, including the cost of packing and packages, but not including agents' commission if it does not exceed five per cent.; provided that in no case shall the true current value as in this section defined be less than the cost of the goods to the importer at the place of purchase.

Spirits.

9.* Notwithstanding anything to the contrary contained in this Ordinance or in the Liquor Licensing Ordinance 1902 or any amendment thereof it shall be lawful to distil spirits from the produce of the vine for sale upon payment of an excise duty of nine shillings per imperial proof gallon with an allowance for underproof down to seven shillings and sixpence per gallon and to admit similar spirits manufactured within the South African Customs Union at such rate of duty; provided that such spirits shall only be distilled disposed of removed or imported under regulations~~||~~ made by the Lieutenant-Governor as hereinafter mentioned; provided further that no such spirits distilled in this Colony shall be disposed of by the distiller except to persons licensed to deal in spirituous liquors.

Form of declaration.

10. The following form shall take the place of the declaration prescribed in section *seven* of the Customs Management Ordinance 1902.

I the undersigned.....do hereby declare that the above is a true description and complete return of all the goods contained in the above-mentioned packages and that the values given of the same are the true current value of same as defined by law including the cost of packing and packages at the place where the goods were purchased for importation into The Transvaal.

The above declaration signed the.....day of190... in the presence of

.....Collector.

11. Section *eleven* of the Customs Management Ordinance 1902 shall be and is hereby repealed and the following provision shall apply in lieu thereof:—

For the purpose of entry for customs and collection of duty on goods imported into this Colony by parcels post any form or label affixed to the parcel under the Postal Regulations shall be deemed to be an entry made under the provisions of the Customs Management Ordinance 1902 and the statement of value entered on such form and signed by the sender shall take the place of the declaration to be made by the importer in section *ten* of this Ordinance for the purpose of ascertaining the value of the articles on importation into this Colony and all goods contained in any packets imported by parcels post and found not to agree with the value or description entered on the above-mentioned form or label shall be subject to

* As amended by Act No. 6 of 1908, sec. 3.

|| For regulations see Govt. Notices Nos. 1161 of 1906 (*Gazette*, 8/11/06) and 67 of 1907 (*Gazette*, 18/1/07).

forfeiture or the importer to the penalties prescribed for under-valuation or misdescription as if an entry and a declaration had been made.

12. Any entry writing oath affirmation or declaration required to be made by any law relating to the customs shall if made in any Colony or Territory in the South African Customs Union be binding and of full force and effect in any other portion of the Union and the same shall apply to or before an officer of this Colony in the Province of Mozambique.

Declarations made in any portion of Union in Province of Mozambique to be binding.

*13. The Lieutenant-Governor may from time to time make alter and repeal regulations for

Power of Lieutenant-Governor to make regulations.

(a) the removal and conveyance to and across the borders of this Colony of goods referred to in this Ordinance;

(b) the rebate or suspension of the duties referred to in sections *four five* and *six* of this Ordinance;

(c) the payment to any other Colony or Territory of its share of the customs duties collected by the officers of this Colony;

†(d) the importation of spirits the produce of the vine;

§(e) the distillation in this Colony of such spirits the licensing and control of distilleries the fees payable in respect of licences for distilling (not exceeding one pound per annum for each still) the disposal and removal of such spirits and the mode of assessment and payment of the excise duty;

(f) prescribing the functions and duties of all officers employed in the carrying out of this Ordinance and generally for the due and proper administration thereof.

14. Any person who

(a) shall produce any false invoice;

(b) make any false representation in regard to the country in which any goods were grown produced or manufactured or in any other respect; or

(c) shall contravene any regulation made under this Ordinance;

Penalties.

shall be liable to a fine not exceeding three hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding twelve months or to both such fine and imprisonment; and all goods and spirits in respect of which any such false invoice shall be produced or false representation made all goods imported or removed all spirits imported removed distilled or disposed of in contravention of any such regulation all vehicles and animals made use of in the importation or removal of such goods or spirits and all stills or utensils used in the distillation of such spirits shall be forfeited.

* For regulations, see Govt. Notices Nos. 976 of 1908 (*Gazette*, 25/9/08), 1444 of 1909 (*Gazette*, 24/12/09 and 7/1/10), 533 of 1910 (*Gazette*, 19/5/10); and for regulations *re* commercial travellers, see Govt. Notice No. 977 of 1908 (*Gazette*, 25/9/08).

† For regulations, see Govt. Notices Nos. 1161 of 1906 (*Gazette*, 8/11/06), 67 of 1907 (*Gazette*, 18/1/07).

§ For regulations, see Govt. Notice No. 653 of 1906 (*Gazette*, 29/6/06).

Title and
date of taking
effect.

15. This Ordinance may be cited for all purposes as the Customs Amendment Ordinance 1906; and shall come into operation from the first day of July 1906 and the Customs Union and Tariff Amendment Ordinance 1903 and so much of any other law as may be repugnant to or inconsistent with the provisions of this Ordinance shall be and are hereby repealed; provided that

(1) the tariff in respect of any articles the duties on which shall have been increased by this Ordinance shall take effect from one o'clock p.m. on the twenty-fifth day of May 1906 and shall be subject to the provisions of sections *four* and *five* of this Ordinance; except in respect of the duties on second-hand clothing for sale (as mentioned in Item No. 11) match-splints (mentioned in Item No. 25) and skimmed or separated milk (mentioned in Item No. 27) which shall take effect on the first day of July 1906;

(2) the tariff in respect of duties on galvanised and corrugated iron sheets wood

(a) unmanufactured

(b) ceiling and flooring boards planed tongued and grooved

shall take effect on the first day of September 1906.

SCHEDULE.

CUSTOMS UNION TARIFF.

Class I.—SPECIAL RATES.

	DUTY.			Rebate upon goods the growth, produce or manufacture of the United Kingdom and reciprocating British Colonies.
	£	s.	d.	£ s. d.
*1.				
2. Ale, beer, and cider; all kinds of strength exceeding 3 per cent. of proof spirit, per Imperial gallon	0	2	0	0 0 1½
3. Animals:—				
(a) Cattle for slaughter, each.....	1	10	0	
(b) Sheep for slaughter, each	0	5	0	
(c) Mules and Geldings, each	1	0	0	
†4. Beads, per lb.	0	0	6½	½d. or 3 per cent. as the case may be.
	(or 25 per cent. ad valorem whichever shall be the greater.)			

* Deleted by Act No. 6 of 1908, sec. 4.

† Substituted by Act No. 6 of 1908, sec. 4.

	DUTY.			Rebate upon goods the growth, produce or manufacture of the United Kingdom and reciprocating British Colonies.		
	£	s.	d.	£	s.	d.
5. Blasting compounds, including all kinds of explosives suitable and intended for blasting, and not suitable for use in firearms; and collodion cotton not intended for manufacturing purposes, per lb.....	0	0	2½	0	0	0½
6. Butter, butterine, margarine, ghee, and other substitutes for butter, per lb.	0	0	2¼	0	0	0¼
7. Candles, per 100 lbs.	0	5	0	0	0	10
8. Cards, playing, per pack..... (and in addition 15 per cent. <i>ad valorem</i>)....	0	0	6			
9. Cement, per 400 lbs.	0	1	3	3% <i>ad val.</i>	0	0 3
10. Chicory and substitutes for coffee or chicory, including chicory root, per lb.	0	0	2			
11. Clothing, second-hand, for sale, per coat, vest, or trousers, each	0	2	0			
12. Coal and patent fuel, per ton of 2,000 lbs.	0	3	0			
13. Coke, per ton of 2,000 lbs.	0	1	0			
14. Cocoa :—						
(a) Raw, per lb.....	0	0	1			
(b) Ground or manufactured, unsweetened, per lb.	0	0	2	0	0	0½
(c) Cocoa and milk, chocolate and milk, coffee and milk, per lb.	0	0	2	0	0	0½
(d) Cocoa butter and cocoa paste, per lb.	0	0	2	0	0	0½
15. Coffee :—						
(a) Raw, per lb.....	0	0	0¾			
(b) Roasted, ground, or mixed, per lb.	0	0	2			
16. Confectionery, including sweetened cocoa or chocolate, honey, jams, jellies, pudding and jelly powders, preserves, sweetmeats, candied or preserved ginger or chow-chow, and all other kinds compounded, made, or preserved with sugar, but not including purely medicinal preparations properly classed as apothecaryware, per lb.....	0	0	2½	0	0	0¼
17. Corn and grain :—						
(a) Wheat :—						
(1) In the grain, per 100 lbs.	0	1	2	0	0	2
(2) Ground or otherwise prepared, per 100 lbs	0	2	6	0	0	3
(3) Bran, wheaten, per 100 lbs.	0	1	2	0	0	2
†(b) Barley, buckwheat, kaffir corn, maize, millet, oats, rye, beans and peas :—						
(1) In the grain or raw, per 100 lbs.	0	2	0	0	0	2
(2) Ground, malted, or otherwise prepared, including samp, per 100 lbs.....	0	2	9	0	0	3
(c) Rice, per 100 lbs.	0	1	0			
Not including patent, proprietary, or other specially prepared foods for invalids or infants, or corn and grain prepared as vegetables.						
18. Dates, per lb.	0	0	0½			

† Substituted by Act No. 6 of 1908, sec. 4.

	DUTY.			Rebate upon goods the growth, produce or manufacture of the United Kingdom and reciprocating British Colonies.		
	£	s.	d.	£	s.	d.
19. Fish, not being of South African taking, per lb. . .	0	0	1½	0	0	0¼
20. Fodder :— Chaff, hay, lucerne, oat-hay, oil-cake, and other fodder not otherwise described, per 100 lbs.	0	2	0	0	0	2
21. Fruits :— (a) Preserved, of all kinds, bottled, tinned or otherwise preserved, including pulp and candied peel, per lb.	0	0	2½	0	0	0¼
(b) Dried, of all kinds, including almonds and nuts, per lb.	0	0	2½	0	0	0¼
22. Gunpowder and other explosives suitable for use in firearms, per lb. (and in addition 15 per cent. <i>ad valorem</i>)	0	0	6	3% <i>ad valorem</i>		
23. Guns and Gun-barrels, firearms :— (a) Single, per barrel.	1	0	0	3% <i>ad valorem</i>		
(b) Double and other, per barrel. (and in either case in addition 15 per cent. <i>ad valorem</i>)	0	15	0			
24. Lard, including compound lard, cottolene, nuttose, and other similar substances for use as food, per lb.	0	0	1½	0	0	0¼
25. Matches :— (a) Wooden ; in boxes or packages of not more than 100 matches, per gross of boxes or packages	0	2	0	/		
In boxes containing more than 100, but not more than 200 matches, per gross of boxes or packages	0	4	0			
And for every 100 additional matches, in boxes or packages, per gross of 100 matches.	0	2	0			
(b) Fusees, vestas, or wax matches, or other patent lights used as such : in boxes or packages containing not more than 50, per gross of boxes or packages.	0	2	0			
In boxes or packages of more than 50, but not more than 100, per gross of boxes or packages	0	4	0			
And for every 50 additional in boxes or packages, per gross of 50 matches.	0	2	0			
Match splints to be classed, and pay duty, as matches.						
26. Meats, fats, soups, and other similar substances used as food, but not including extracts and essences or tallow, per lb.	0	0	1½	0	0	0¼
27. Milk, condensed, desiccated, or preserved milk or cream :— (a) Full cream, per 100 lbs.	0	5	2	0	1	0
(b) Skimmed or separated, per lb.	0	0	6			
28. Oils, mineral : illuminating and burning, per Imperial gallon	0	0	1			

	DUTY.			Rebate upon goods the growth, produce or manufacture of the United Kingdom and reciprocating British Colonies.
	£	s.	d.	£ s. d.
29. Onions and garlic, not preserved, per lb.	0	0	0½	
30. Pickles, sauces, chillies, chutneys, and other condiments, per lb.	0	0	2¼	0 0 0¼
31. Pills, imported in packages not for direct sale retail to the public, per lb.	1	0	0	
32. Pistols and revolvers, each (and in addition 15 per cent. <i>ad valorem</i>)	0	5	0	
33. Potatoes, not preserved, per 100 lbs.	0	2	0	3% <i>ad val.</i> 0 0 2
34. Soap, soap powders, and extracts, per 100 lbs. . . (or 25% <i>ad valorem</i> , whichever shall be the greater)	0	4	9	0 0 7 (or 3% <i>ad val.</i> as the case may be)
35. Spices and turmeric, per lb.	0	0	2¼	0 0 0¼
36. Spirits :—				
(a) Perfumed, per Imperial gallon	1	2	6	
(b) Liqueurs, cordials, and mixed spirits, exceeding 3 per cent. of proof spirit, per Imperial gallon	1	0	0	
(c) Other sorts, exceeding 3 per cent. of proof spirit, per Imperial proof gallon.	0	19	0	
Note.—No allowance will be made for under-proof in excess of 15 per cent.				
Note.—Medicinal and toilet preparations and essences (liquid) and syrups and tinctures containing over 3 per cent. of proof spirit to be classed as spirits under item (b).				
37. Sugar :—				
(a) Candy, loaf, castor, icing, and cube, per 100 lbs.	0	5	0	
(b) Other kinds, including golden and maple syrup, molasses, saccharum, <i>glucose</i> * and treacle, per 100 lbs.	0	3	6	
(c) Saccharine and other sweetening substances in a concentrated form, per lb.	1	0	0	
* Note.—In the case of sugar upon which bounties are granted in the country of origin, an additional duty equal to the amount of such bounty is to be levied.				
38. Tea, per lb.	0	0	4	
39. Tobacco :—				
(a) Cigars and cigarillos, per lb. (and in addition 15 per cent. <i>ad valorem</i>)	0	6	0	
(b) Goorak, or gooracco, and hookah mixture, and all imitations or substitutes therefor or for tobacco, per lb.	0	6	0	
(c) Snuff, per lb.	0	4	0	
(d) Cigarettes, per lb. (and in addition 15 per cent. <i>ad valorem</i>)	0	4	6	
(e) Manufactured, per lb.	0	4	0	
(f) Unmanufactured, per lb.	0	3	0	

° Word in italics has been inserted by Act No. 6 of 1908, sec. 4.
 ° For duties on and regulations for importation of sugar see Notice No. 423 of 1906 (*Gazette*, 6/7/06).

	DUTY.			Rebate upon goods the growth, produce or manufacture of the United Kingdom and reciprocating British Colonies.		
	£	s.	d.	£	s.	d.
† 40. <i>Vinegar, extracts or essences of vinegar, acid acetic and pyroligneous, per gallon of any strength not exceeding the strength of proof:—</i>						
(a) <i>In bottles or other vessels of a capacity of not more than one Imperial quart, per Imperial gallon</i>	0	1	1	0	0	1
(b) <i>In larger vessels or in bulk, per Imperial gallon</i>	0	0	7	0	0	1
<i>(and in addition in either case for each degree of strength in excess of the strength of proof, per degree)</i>	0	0	4	0	0	1
<i>Note.—Proof will be held to be equal to 6 per cent. of absolute acid and shall be determined in the manner prescribed by the Customs.</i>						
41. <i>Wine:—</i>						
(a) <i>Still wines, not exceeding 20 per cent. of proof spirit, per Imperial gallon</i>	0	4	0			
(b) <i>Still wines, exceeding 20 per cent. but not exceeding 50 per cent. of proof spirit, per Imperial gallon</i>	0	8	0			
(c) <i>Sparkling wines, per Imperial gallon</i> <i>(and in addition 15 per cent. ad valorem on all the above classes of wine)</i>	0	12	6			
<i>Note.—Wines containing less than 3 per cent. of proof spirit are not included in the above, and wines containing more than 50 per cent. of proof spirit are classed as spirits.</i>						
<i>General Note.—24 reputed half-pints, 12 reputed pints, 6 reputed quarts, and 4 reputed Imperial quarts to be deemed to be not less than 1 gallon.</i>						
<i>Tins, jars, or other receptacles of reputed weight to be deemed to be not less than such weight.</i>						
<i>Reputed 12 oz., 14 oz., and 16 oz. packets of candles to be deemed to be of those weights respectively.</i>						
<i>Cement in packages of not less than 350 lbs., and not more than 400 lbs., to be deemed to be 400 lbs.</i>						
<i>Packages of flour or wheaten meal containing not less than 90 lbs., and not more than 100 lbs., to be deemed to be 100 lbs.</i>						
<i>Oils, mineral, illuminating, and burning, in ordinary reputed two 5 American gallon or ten 1 American gallon tins to be deemed to be not less than 8½ Imperial gallons, and two 4 reputed Imperial gallon tins to be deemed to be not less than 8 Imperial gallons.</i>						
<i>“Proof” means the strength of proof as ascertained by Sykes’ hydrometer.</i>						

† Substituted by Act No. 6 of 1908, sec. 4.

Class II.—MIXED RATES.

	£	s.	d.
42. Boots and Shoes, per £100.....	15	0	0
With a minimum per pair of—			
Men's.....	0	0	9
Women's.....	0	0	6
Children's.....	0	0	3
43. Printed matter :—			
(a) Advertising, including catalogues, price lists, almanacs, calendars, labels, posters, and show cards, per £100.....	25	0	0
Or 2d. per lb., whichever shall be the greater.			
(b) Account and cheque books, printed stationery and forms, company reports, scrip, share certificates and promissory notes, cards (Christmas, New Year, birthday, post, and pictorial), directories, guide books and hand-books relating to South Africa, and boxes, cardboard, and bags, paper, printed upon, per £100.....	25	0	0
44. Vehicles :—			
(a) Carriages, carts, coaches, and wagons, and finished parts thereof not elsewhere enumerated, per £100.....	25	0	0
(b) Second-hand carriages, carts, coaches, and wagons, per vehicle.....	10	0	0
And in addition 15 per cent. <i>ad valorem</i> , but in no case shall the duty be less than 25 per cent. <i>ad valorem</i> .			
(Note.—Not including motor cars or cycles.)			
3 per cent <i>ad valorem</i> will be rebated under section four of this Ordinance.			

Class III.—25 PER CENT. *ad valorem*.

45. Beverages :—
- (a) Waters : aerated, mineral and table.
- (b) Fruit juices, cordials and syrups, not elsewhere enumerated.
- (c) All other kinds not exceeding 3 per cent. of proof spirit.
46. Biscuits, cakes, puddings and pastry.
47. Blankets and sheets, or rugs, cotton or woollen, or manufactures of cotton and wool commonly used as cotton or woollen blankets or rugs, and cotton quilts, the single article in pairs or in the piece ; and coats, jackets or other apparel made of blanketing or baize not elsewhere enumerated.
48. Bon-bons, surprise packets and crackers, and fancy confectionery.
49. Bricks, except bath.
50. Extracts and essences of all kinds for foods, flavouring or perfumery, not elsewhere enumerated, including concentrated soup.
51. Fire-works of all descriptions.
52. Harness and saddlery.*
53. Medicinal preparations, not elsewhere enumerated, other than pills imported in packages not for direct sale retail to the public, when prepared by any secret or occult art and recommended to the public under any general name or title as specifics for any diseases or affections whatsoever affecting the human or animal bodies.
54. Oils, essential or perfumed, including eucalyptus.
55. Perfumery, cosmetics, dyes, powders and other preparations for toilet use, not elsewhere enumerated.
56. Shawls, *woollen*.*
- Note.—3 per cent. *ad valorem* will be rebated under section four of this Ordinance.

Class IV.—3 PER CENT. *ad valorem*.

57. Ambulance materials, imported by recognised associations, corps, or hospitals, lawfully established for instruction or drill in first aid to the wounded.
58. Ammonium : anhydrous, carbonate, chloride (sal-ammoniac) and nitrate : in bulk.
59. Asbestos packing and boiler compositions.
60. Assay apparatus and assay mabor.

* As amended by Act No. 6 of 1908, sec. 4.

61. Bands and belting of all kinds for driving machinery, boiler tubes, bolting cloth and mill silk.
62. Barytes and pumice : in bulk.
63. Battery cloth and baize, gauze, matting, sieving and screening, for use in connection with machinery and apparatus, including brattice cloth, but not including cocoanut matting.
64. Bolts, nuts, rivets, screws, nails and washers, and brass and iron tips and caps for boots and shoes.
65. Bookbinders' requisites, consisting of boards, cloths, leather, marble paper, skin, thread, tape, vellum, webbing, wire, gold and silver leaf, parchment, imitation leather, binders' paper, and cardboard and linen board.
66. Bottles and jars of common glass or earthenware, and bottles ordinarily used for aerated waters : empty.
67. Brass and copper, and composition metal : in bars, ingots, plates and sheets ; plain including perforated, but otherwise unmanufactured.
68. Calcium : carbonate, caustic, chloride, chlorate, bi-sulphite : in bulk.
69. Carbonic acid gas.
70. Cement, liquid, for tube mills.
71. Chains for hauling.
72. Chimneys : metal (smoke stacks).
73. Collodion cotton and glycerine and kieselguhr : in bulk for manufacturing purposes.
74. * Confectioners' requisites, namely, moulding starch, gelatine, and un-sweetened desiccated cocoanut : in bulk.
75. Corks and bungs, and cork wood unmanufactured.
76. Cranes, elevators and shears.
77. Crucibles, cupels, cupelling furnaces, graphite, ingot moulds, retorts and furnaces for roasting minerals.
78. Cyanide of potassium and of sodium ; sulpho cyanide of potassium, sodium and calcium.
79. Disinfectants : in bulk, provided they are of a standard approved by the various Governments of the Union.
80. Emery : in bulk, emery cloth and paper, emery wheels.
81. Felt, rubberoid, uralite, and similar substances for building purposes.
82. Fire clay and terra alba.
83. Fire escapes and fire extinguishing appliances and apparatus.
84. Fruits, fresh or green, including cocoanuts.
85. Glue : in bulk.
86. Gypsum (sulphate of lime or plaster of paris) : in bulk.
87. Hair-cloth and springs for furniture.
88. Hops.
89. Hose : conveying.
90. Hubs, rims, spokes, felloes, shafts, tent bows and poles, cut or fashioned not finished, except when for wagons and carts commonly used for the conveyance of goods.
91. India-rubber, unmanufactured.
92. Iron and steel :
 - (a) Rough and rolled but otherwise unmanufactured.
 - (b) Plain, perforated, galvanised and corrugated sheets.
 - (c) Angle, bar, channel, hoop, rod, plate, H, T, and similar iron or steel, not perforated or put together or worked up in any way for structural or other purposes : not elsewhere enumerated.
93. Jacks, screw and hydraulic.
94. Launches, tugs and lighters ; provided that when condemned or landed to be broken up duty shall be paid at the Customs on the hull and all fittings, according to the tariff that may then be in force.
95. Lead : bar, pipe, sheet, foil, and acetate of.
96. Leather : patent, enamelled, roan and morocco, and pig skin in the piece, and valve hide.
97. Lifts : power, including the gates.
98. Machinery :—
 - (a) Machinery, apparatus, appliances and implements (not including material, vehicles, mechanics' tools, domestic machines or harness) for agricultural, manufacturing, mining, bookbinding, printing, and other industrial purposes.

* As amended by Act No. 6 of 1908, sec. 4.

- (b) Machinery, apparatus, appliances, implements and electrical material used in connection therewith, for the generation, storage, transmission, distribution of, and lighting by, gas or electric power, but not including electroliers, hand lamps or fancy fittings.
99. Magnesium sulphate : in bulk.
 100. Metal of all sorts in bars, blocks, ingots, and pigs for founding, not elsewhere described.
 101. Metal shaft sets and rails, buckets, skips, trucks and tubs, wheeled or otherwise, for hauling on rails or wires.
 102. Packing and lagging for engines, machinery, piping and buildings.
 103. Paper : all plain paper in its original mill ream, wrapper or reels, not less in size than 16 inches by 15 inches, not including feint or ruled papers or blotting, brown, cartridge, drawing, manifold, packing, or tissue papers.
 104. Pipes, piping and tubes of all kinds for gas, steam, drainage, sewerage, irrigation, water supply or pumping, including cocks, meters and taps, but not including grids, manhole covers and fittings, surface boxes, down-piping and guttering.
 105. * Potassium and sodium : carbonate, bi-carbonate, caustic and silicate, chlorate, bichromate, permanganate, red and yellow prussiate of : in bulk.
 106. Presses : wool, hay, straw and forage.
 107. Printing, lithographic and ruling inks, roller composition and stamping colours and printers' bronze.
 108. Railway construction or equipment requisites, as follows :—
 Rails, sleepers, fastenings for rails or sleepers, girders, iron bridgework, culvert tops, locomotives, tenders, ballast trucks, goods wagons, carriages, trolleys, engine water-tanks, turn tables, permanent or fixed signals, weigh-bridges and railway lamps.
 109. Resin : in bulk.
 110. Saddle-trees.
 111. School furniture and requisites : being all articles certified by the Superintendent-General of Education, or any official appointed for that purpose in any Colony or Territory in the Union to be for use in any school.
 112. Sheep-dip, sheep-dipping powders, materials suitable only for dip and dipping tanks.
 113. Slates for roofing.
 114. Sprayers and sprinklers and other apparatus for destroying pests or diseases in stock, plants or trees.
 115. Springs, axles, steps and other metal parts not ordinarily made in the Union, for carts, carriages, coaches and wagons.
 116. Staves, not worked further than roughly fashioned.
 117. * Substances for destroying pests or diseases in stock, plants or trees, sulphate of copper, arsenic and arsenious acid, arseniate of soda.
 118. Tanks and vats, suitable and intended for mining purposes, and sub-structures for the same.
 119. Telegraphs and telephones : materials and instruments for use in construction and working of telegraph and telephone lines.
 120. Thread : boot and shoe makers', saddlers' and sailmakers', and seaming twine and binding twine and harvest yarn.
 121. Tin and zinc : bar, plate or sheet : plain or perforated but otherwise unmanufactured, *and zinc fume, dust and shavings.*†
 122. Traction engines, power lorries and trailers for the same, stone crushers, steam rollers and street sweeping machines.
 123. Tramway construction and equipment requisites as follows :—
 Rails, sleepers, fastenings for rails or sleepers, iron gates, girders, iron bridgework, culvert tops, cars, trolleys, water-tanks, and turn tables.
 124. Vegetables, fresh or green, but not including garlic, potatoes, or onions.
 125. Water-boring and pumping apparatus, and pumps, not including beer pumps.
 126. Wire and wire-netting for fencing : droppers, gates, hurdles, posts, standards, strainers, staples, stiles, winders, and other materials or fastenings of metal ordinarily used for agricultural or railway fencing ; and baling wire, *and fruit tree netting.*†
 127. Wire for making mattresses.
 128. Wire rope.

* As amended by Act No. 6 of 1908, sec. 4.

† Words in italics added by Act No. 6 of 1908, sec. 4.

129. Wood :—

(a) Unmanufactured.

(b) Ceiling and flooring boards : planed, tongued and grooved.

NOTE.—The whole of the duties upon this class will be rebated under section *four* of this Ordinance.

Class V.—FREE.

130. All raw produce of South Africa, and animals bred in South Africa imported into the Union overland.
131. All animals bred and articles grown, produced or manufactured within the Union, except :—
Spirits, beer, *patent medicines and sulphuric acid*,* or blasting compounds, distilled or manufactured within the Union, in case of the imposition of a duty or the prohibition of manufacture for sale.
132. Animals living, not elsewhere enumerated.
133. Appointments and uniforms for the military, naval, volunteer or other (Imperial or Colonial) forces of His Majesty.
134. Atlases, charts, globes and maps.
135. Bags (not including paper bags) for flour, grain, manure, local manufactures, produce, sugar, wool, coal and minerals, and bagging and sacking in the piece.
136. Band instruments and stands, the *bona-fide* property of any military, naval or volunteer corps, and not the property of individuals.
137. Bones, feathers, grass, ivory, hair, hoofs, horns, moss, shells, skins, teeth, wool and other parts of animals, birds, fishes or reptiles, not being manufactured, polished, or further prepared than dried or cleaned, but in their raw and unmanufactured state.
138. Books and music, printed, including newspapers and periodicals, not being foreign unauthorised prints of any British or South African copyright work, the importation of which is prohibited, not being advertising matter elsewhere enumerated.
139. † Borax, *boracic acid*,* bromine, litharge, manganese dioxide and quicksilver.
140. Bottles and jars of common glass or earthenware, imported full of any article liable to a rated duty only.
141. Bullion (in the bar or sheet), coin, specie, bank notes and other paper currency.
142. Carriages, carts, wagons and other wheeled vehicles, the manufacture of South Africa, imported into the Union overland.
143. Church decorations, altars, bells, fonts, lecterns, pulpits, organs, plate or vestments, and illuminated windows, imported by or for presentation to any religious body.
144. Coir, candle wick, cotton, *copra*,* flax, fibre, flock, hemp and jute : raw, waste or unmanufactured.
145. Consular uniforms and appointments, and printed official consular stationery.
146. Cork dust, paper shavings, sawdust, husks and other waste substances, intended and suitable for use only as packing material.
- ‡ 147. *Cups, medals, and other trophies imported for presentation as prizes at examinations, exhibitions, shows, or other public competitions for skill or sport ; for bravery, good conduct, humanity, for excellence in art, industry, invention, manufactures, learning, science, or for honourable or meritorious public services, or for rifle shooting by Imperial or Colonial forces, or recognised rifle associations, not being for the purpose of advertisement ; provided that such articles shall on importation or delivery free from the Customs bear engraved or otherwise indelibly marked on them the occasion or purpose for which they are presented.*
148. Diagrams, designs, drawings, models and plans.
149. Diamonds and other gems, or precious stones, in their rough state.
150. Dye nuts, gambier, myrobalans, sumach, valonia, and dye-stuffs for leather ; and alum.
151. Engravings, lithographs and photographs, not including enlargements or reproductions of photographs, and not being labels or advertisements elsewhere enumerated.
152. Fish fry and ova.
153. Fish : fresh, dried, cured, or salted of South African taking and raw oil from fish of South African taking.

* Words in italics have been added by Act No. 6 of 1908, sec. 4.

† As amended by Act No. 6 of 1908, sec. 4.

‡ Substituted by Act No. 6 of 1908, sec. 4.

154. Guano and other substances, animal, mineral or vegetable, artificial or natural, suitable for use as fertilisers or manures.
155. Ice.
156. Life boats, belts and buoys, and other life-saving apparatus imported by any recognised society.
157. Marble in the rough or sawn.
158. Nitrates except nitrate of ammonium, for manufacturing purposes or for fertilisers: in bulk.
- † 159. *Oils; palm, palm kernel, cotton seed and cocoanut, in bulk, for manufacturing purposes, and under such conditions and regulations as the Customs may prescribe.*
160. Paintings, pictures, picture books and etchings, not being advertisements or labels elsewhere enumerated.
161. Platinum, chloride of, and *platinum wire*.*
162. Public stores, imported or taken out of Bond by, and *bona-fide* for the sole and exclusive use of, the Government of His Britannic Majesty, and of any Government belonging to the Union; provided that a certificate be delivered to the Customs authorities given under the hand of an officer approved by the Principal Officer of Customs, setting forth that any duty levied on such public stores would be borne directly by the Government; and provided further that no portion of such stores used or unused shall be sold or otherwise disposed of so as to come into the possession of or into consumption by any persons not legally entitled to import the same free of duty, without the consent of the Principal Officer of Customs and the payment of the duties to him by the officer so selling or disposing of such public stores at the rate leviable at the date of sale.
163. Rattans, cane and bamboo: unmanufactured.
164. Sculpture, being original works of art.
165. Seeds, bulbs, plants and tubers, for planting or sowing only, not including edible kinds or fodder.
166. Specimens illustrative of natural history and exhibits for public museums or scientific purposes, and antiquities for the same purposes.
167. Stone linings and pebbles for tube mills.
168. Sulphur: in bulk.
169. Sulphurous anhydride.
170. Tallow.
171. Tobacco, the produce of South Africa, imported into the Union overland.
172. Vaccine, virus, *rennet*,* toxin and serum.
173. Wax: viz. :—paraffin and stearine, and stearine grease, ordinarily used in the manufacture of candles or explosives.
174. Wood meal and wood pulp.

Class VI.—GENERAL ad valorem RATE 15 PER CENT.

175. All goods, wares, and merchandise not elsewhere charged with duty, and not enumerated in the Free List, and not prohibited to be imported into the Union, shall be charged with a duty of 15 per cent. *ad valorem*.
- Note.—3 per cent. *ad valorem* will be rebated under section *four* of this Ordinance.

† Substituted by Act No. 6 of 1908, sec. 4.

* Words in italics have been added by Act No. 6 of 1908, sec. 4.

No. 5 of 1906.]

[Promulgated 20th July, 1906.]

AN ORDINANCE

TO AMEND THE FISH PRESERVATION ORDINANCE, 1904.

Assented to 14th July, 1906.

BE IT ENACTED by the Lieutenant-Governor of The Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Repeal of law.

1. The Fish Preservation Ordinance 1904 shall be and is hereby repealed.

Period of close season for fish and protection of trout, etc., for such period.

2. The Lieutenant-Governor may from time to time by Proclamation in the *Gazette*

**(a)* prescribe fix and alter for any district or portion of a district of this Colony the periods of close season within which it shall not be lawful to fish for capture or destroy all or any particular fish;

(b) prescribe a list of fish being native fish which shall not be subject to any such periods of close season;

†*(c)* prohibit for a specified period the fishing for capture or destruction in any river stream lake dam pool or other waters of any trout or of any other fish which have been or shall be introduced into this Colony.

Prohibition of use of explosives and chemicals to destroy fish.

3. Any person who shall at any time by means of dynamite or other explosive or by means of chemical poisonous or other injurious substance wilfully kill or destroy any fish in any river stream lake dam pool or other waters in this Colony shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment of the same to imprisonment with or without hard labour for a period not exceeding six months or to both such fine and such imprisonment.

Regulations to be made as to the netting of fish under licence.

‡4. The Lieutenant-Governor may from time to time make alter and repeal regulations not inconsistent with the provisions of this Ordinance

(a) prohibiting the taking of all or any particular fish by means of any drag cast stake or other net without a licence;

(b) regulating the periods within which all fish or any particular fish may be taken under such licence by means of a drag cast stake or other net:

(c) prescribing who shall issue such licences and the fees payable therefor;

* For close season of trout, see Proc. (Admn.) No. 73 of 1906.

† For temporary protection of trout, see Proc. (Admn.) No. 17 of 1909.

‡ For regulations, see Govt. Notices Nos. 869 of 1906 (*Gazette*, 31/8/06), 222 of 1907 (*Gazette*, 22/2/07).

(d) prescribing the size of any such drag cast stake or other net and of its mesh and the manner and locality in which it shall be used;

and such regulations may be put in force in every or any particular district of this Colony or in any portion of a district.

5. Any person who shall fish for capture or destroy any trout in any of the rivers streams or other waters in this Colony except by means of rod and line or shall use with intent to such capture or destruction any bait or lure other than artificial fly shall be liable on conviction to a fine not exceeding twenty pounds and in default of payment of the same to imprisonment with or without hard labour for a period not exceeding three months.

Trout to be captured by artificial fly only.

6. Any person who

(a) shall act in contravention of any Proclamation issued under section *two*; or

(b) shall contravene any regulation made under section *four*;

Penalties for contravention of Proclamation or regulations.

shall be liable on conviction to a fine not exceeding twenty pounds and in default of payment of the same to imprisonment with or without hard labour for a period not exceeding three months.

7. Any person charged with contravening a regulation under this Ordinance requiring him to have a licence shall be deemed to be without such licence unless he shall produce the same to the court before which he is charged or give other satisfactory proof of possessing the same.

Evidence.

8. When any person shall be convicted of taking fish by means of a drag cast stake or net in contravention of any regulation made under this Ordinance the court before which such conviction shall take place may order any such drag cast stake or net to be forfeited or may cancel any licence issued under such regulations.

Forfeiture of net.

9. This Ordinance may be cited for all purposes as the Fish Preservation Ordinance 1906 and shall come into operation on the First day of September 1906.

Title and date of taking effect.

No. 6 of 1906.]

[Promulgated 3rd August, 1906.]

AN ORDINANCE

TO CONSOLIDATE AND AMEND THE LAWS RELATING TO CONVICT PRISONS AND GAOLS AND TO PROVIDE FOR THE ESTABLISHMENT OF REFORMATORIES.

Assented to 19th July, 1906.

BE IT ENACTED by the Lieutenant-Governor of The Transvaal with the advice and consent of the Legislative Council thereof as follows:—

PART I.

PRELIMINARY.

Date of taking effect.

1. This Ordinance shall come into operation on such date as may hereafter be notified by the Lieutenant-Governor by Proclamation in the *Gazette*.*

Repeal of laws.

2. The laws mentioned in the schedule hereto shall be and are hereby repealed to the extent therein set forth together with any other laws repugnant to or inconsistent with the provisions of this Ordinance.

Interpretation of terms.

3. In this Ordinance unless inconsistent with the context

“minister” shall mean any member of the Executive Council of this Colony to whom may be assigned from time to time by the Lieutenant-Governor the control and management of convict prisons gaols and reformatories;

“convict prison” shall mean any place which has already been appointed exclusively as a place for the imprisonment detention or confinement of persons convicted of any offence or which shall hereafter be established as such place under section *eleven* and described by notice in the *Gazette* under the hand of the minister and shall include all branches or out-stations buildings or premises to which convicts may be drafted or sent from any place for the purposes of imprisonment detention confinement labour or otherwise and all officers’ quarters used in connection with such place;

“gaol” shall mean any place now used or hereafter established under section *fifteen* and described by notice in the *Gazette* under the hand of the minister as a place for the detention or confinement of persons liable to

* See Proc. (Admn.) No. 112 of 1906 (*Gazette*, 21/12/06, p. 682) declaring that Ordinance shall come into operation on the 1st January, 1907.

- detention in custody and shall include all yards and buildings and officers' quarters used in connection with such place;
- “lock-up” shall mean any building cell or place in which any person lawfully arrested or detained in custody is placed with a view to his being brought to trial or removed to a gaol or any building cell or place provided for the detention in custody of prisoners at or in the neighbourhood of any place where there is no ordinary gaol;
- “governor” and “deputy-governor” shall mean respectively the officers appointed under section *six* to a convict prison or gaol and any person lawfully acting for any such officer;
- “gaoler” shall mean the keeper or officer for the time being in charge of any gaol to which no governor or deputy-governor has been appointed;
- “subordinate officer” shall mean every officer male or female attached to a convict prison or gaol or reformatory other than a visiting magistrate resident magistrate lady superintendent governor deputy-governor warden chaplain or medical officer;
- “convict” shall mean any convicted person under detention at a convict prison;
- “prisoner” shall mean any person whether convicted or not who is detained in any gaol or lock-up;
- “resident magistrate” shall include an assistant resident magistrate;
- “reformatory” shall mean any institution established under section *forty-five* and all lands outbuildings premises adjacent thereto and used in connection therewith;
- “regulation” shall in Parts II to VII inclusive mean any regulation made under section *thirty-seven* and in Part VIII shall mean any regulation made under section *sixty-one* of this Ordinance;
- “warden” shall mean any officer male or female appointed to manage and be in charge of a reformatory or portion thereof and any person lawfully acting for such officer.

PART II.

ADMINISTRATION OF CONVICT PRISONS AND GAOLS AND APPOINTMENT OF OFFICERS.

4. (1) There shall be a department to be known as the “Prisons Department” in charge of which shall be an officer to be styled the “Director of Prisons” and appointed by the Lieutenant-Governor.

Establishment of Prisons Department.

(2) The duties of the Prisons Department shall be the performance of all work necessary for or incidental to the administration of convict prisons gaols reformatories and such other duties as may be assigned to it by regulation.

Inspector of
prisons
appointment
and duties.

5. (1) The Lieutenant-Governor may from time to time appoint an officer to be styled "Inspector of Prisons" who shall perform such duties as are assigned to him by this Ordinance or by regulation.

(2) The inspector of prisons shall periodically and at such other times as the minister may direct visit and inspect every convict prison gaol and lock-up within the Colony and shall conform to such instructions as may be issued to him in that behalf by the minister. It shall be his duty to see that all regulations for the management of convict prisons gaols and lock-ups have been and are being strictly observed and to report immediately to the minister if such regulations are not being strictly observed.

Officers of
convict
prisons and
gaols.

6. (1) There shall be for every convict prison and if the Lieutenant-Governor shall so determine for any gaol a governor or a deputy governor or both such officers and a medical officer and for every convict prison or gaol in which females are detained there shall if the Lieutenant-Governor shall so determine be a lady superintendent and if in any prison females only are detained the lady superintendent in charge thereof shall be deemed to be the gaoler and shall so far as practicable perform all the duties imposed upon a gaoler by this Ordinance or any regulation.

(2) In every gaol for which a governor or deputy-governor shall not have been appointed there shall be an officer to be styled the "gaoler" and such gaoler and the officers of every such gaol shall be under the immediate authority and superintendence of the resident magistrate of the district in which the same is situate who shall be responsible to the minister for the proper management of such gaol.

(3) Whenever no medical officer shall have been appointed for any gaol under this section the district surgeon resident at the town in which such gaol is situate shall act as the medical officer thereof.

(4) One or more ministers of religion may be appointed to every convict prison or gaol who shall perform the duties and functions of chaplain to such convict prison or gaol.

By whom
officers to be
appointed.

7. All officers of convict prisons and gaols (other than subordinate officers) shall be appointed and be removable by the Lieutenant-Governor and all subordinate officers shall be appointed by the Director of Prisons under an agreement in writing in which shall be incorporated the period and other conditions of their service and shall be removable by the Director of Prisons subject to an appeal to the minister made in accordance with regulations.

Retirement
of subordinate
officer and
penalties for
unlawful
withdrawal
from service.

8. (1) No subordinate officer shall be at liberty to resign or withdraw himself from his office before the expiration of the period for which he shall have agreed to serve except with the permission in writing of the Director of Prisons.

(2) If any subordinate officer shall desert from a convict prison or gaol or shall withdraw himself from his office in contravention of the provisions of this section he shall be

liable on conviction to a fine not exceeding fifty pounds and in default of payment thereof to imprisonment with or without hard labour for a period not exceeding three months or to such imprisonment without the option of a fine and shall further be liable to forfeit all arrears of pay due to him.

9. Whenever any officer of a convict prison or gaol is suspended removed from or resigns his office or dies the officer so suspended removed or resigning and the members of his family and the members of the family of every deceased officer shall quit the possession of any premises in which he or they have previously resided by virtue of such office when required so to do by notice under the hand of the Director of Prisons and if he or they refuse or neglect to give up such possession within forty-eight hours after such notice as aforesaid has been served the resident magistrate of the district upon proof made of the service of such notice and of such refusal or neglect to comply therewith may by warrant under his hand direct any person named in such warrant to enter by force if necessary into or upon the premises and eject or remove therefrom every such officer or any other person wrongfully retaining possession together with any goods or articles there found which are not the property of the Crown.

Duty of officer of convict prison or gaol to quit premises occupied by virtue of office on resignation thereof.

10. It shall be lawful for the Lieutenant-Governor from time to time as occasion may require to appoint any resident magistrate to be a visiting magistrate of any convict prison or gaol and from time to time to revoke such appointment.

Appointment of visiting magistrates.

PART III.

CONVICT PRISONS.

*11. The Lieutenant-Governor may from time to time establish convict prisons in this Colony for the purposes of the detention and confinement in accordance with the provisions of this Ordinance and any regulation of persons convicted of any offence and sentenced to any period of imprisonment with hard labour.

Establishment of convict prisons.

12. (1) No governor or deputy governor or other officer of a convict prison shall receive into his custody thereat any convict except upon the warrant of the court by which sentence was passed upon such convict or upon a warrant under the hand of the minister and he shall keep such warrant for purposes of record. And every sheriff deputy sheriff gaoler or other person shall be bound to transmit through an officer in charge of a convict such warrant at the time of the removal of such convict to a convict prison.

Reception of convicts into convict prison only upon warrants.

(2) If a convict be removed to a convict prison as in this section provided the warrant under which he shall have

* For establishment of convict prisons see Govt. Notices No. 474 of 1907 (*Gazette*, 26/4/07) (Central Prison, Pretoria); No. 984 of 1907 (*Gazette*, 6/9/07) (Emmasdale); No. 1146 of 1908 (*Gazette*, 20/11/08) (certain buildings, Houtpoort, Heidelberg); No. 730 of 1909 (*Gazette*, 25/6/09) (Premier Mine).

been detained at the place from which he is being removed shall be transmitted by the officer in charge of such prison to the officer in charge of the place to which such removal is made together with a statement of the punishments (if any) for prison offences recorded against him and a statement of all other facts relating to such convict as may be prescribed by regulation.

(3) Any convict may by warrant under the hand of the Director of Prisons be from time to time removed from one convict prison to another convict prison or from a convict prison to a gaol or from a gaol to a convict prison if such convict be under sentence of hard labour or of death.

Keeping of journal in convict prison by governor.

13. The governor or if there be no governor the deputy governor of every convict prison shall keep a journal in which he shall record all events of importance happening within the prison or outside such prison connected with the convicts detained therein and such journal shall be produced to the inspector of prisons and the visiting magistrate upon every visit made by either of them and shall be signed by such inspector or magistrate upon every such visit in proof of such journal having been so produced.

Performance of labour in convict prison.

14. Every convict detained or confined in a convict prison shall subject to the provisions of this Ordinance and any regulation perform such labour tasks and other duties as may be assigned to him by the governor or deputy governor thereof or by the officer in whose charge he shall be.

PART IV.

GAOLS.

Establishment of gaols.

†15. The Lieutenant-Governor may from time to time establish gaols for the detention and confinement of persons liable to detention in custody.

Reception of persons in gaols.

16. No governor deputy governor or gaoler in charge of a gaol shall receive into his custody any person thereat except

(a) in the case of a person committed under an order of civil imprisonment or any other order writ or judgment of a civil court on the production to him of such order writ or judgment;

(b) in the case of an alleged lunatic on production of an urgency order issued under section *four* of the Lunacy Proclamation 1902 or any amendment thereof or under the circumstances mentioned in section *six* of the said Proclamation or any amendment thereof;

(c) in the case of a person accused but not convicted of having committed an offence upon the production of the warrant of commitment of such person;

† For establishment of gaols see Govt. Notices No. 72 of 1908 (*Gazette*, 17/1/08) (new local gaol, Pretoria); No. 203 of 1908 (*Gazette*, 28/2/08) (new gaol, Germiston); No. 926 of 1908 (*Gazette*, 18/9/08) (old school, Johannesburg, for juvenile offenders).

(d) in the case of a person convicted of and sentenced to imprisonment for an offence upon production of the warrant of the Court by which such sentence was passed;

(e) in the case of a person committed for detention under sections *sixty-eight sixty-nine* or *seventy* of the Criminal Procedure Code 1903 upon production of the order of commitment;

(f) in any other case upon a warrant under the hand of the minister;

and the governor deputy-governor or gaoler aforesaid shall keep every such order writ judgment or warrant for purposes of record.

17. Every person received into a gaol as aforesaid shall be detained therein in safe custody until lawfully discharged or removed therefrom and if any person sentenced to imprisonment with hard labour shall be detained in a gaol he shall subject to any special order of the court and subject also to the provisions of this Ordinance or any regulation perform such labour and other duties as may be assigned to him by the governor deputy governor or officer in whose charge he shall be.

Detention of prisoners and performance of hard labour in gaol.

18. (1) Male and female prisoners shall be confined in separate parts of a gaol and in such a manner as to prevent them from seeing conversing or holding any intercourse with each other and the prisoners of either sex shall be divided into classes subject to any regulation.

Male and female prisoners and white and coloured to be separated.

(2) White and coloured prisoners shall be confined in separate parts of a gaol and as far as possible white prisoners shall be kept out of view of coloured prisoners.

19. The governor or deputy governor (if any) and the gaoler of every gaol shall keep a journal in which he shall record all events of importance happening within the gaol or outside the gaol if in any way connected with prisoners detained therein; such journal shall be produced to the inspector of prisons and to the visiting magistrate upon every visit made by either of them and to the resident magistrate of the district upon the occasion of every visit made by him in accordance with sections *twenty-two* and *twenty-three* and shall be signed by such inspector or magistrate upon each such visit in proof of such journal having been so produced.

Duty of gaoler to keep a journal.

20. Prisoners detained under an order or judgment of a civil court and unconvicted prisoners awaiting trial for an alleged offence and persons committed for detention under sections *sixty-eight sixty-nine* or *seventy* of the Criminal Procedure Code 1903 shall be allowed to procure for themselves from outside the gaol and to receive at proper hours therein food bedding clothing or other necessaries subject to a strict examination thereof and under such limitations and restrictions as may be prescribed by any regulation which shall be framed as to prevent extravagance or luxury and to exclude all articles which might possibly communicate infection or facilitate escape.

Persons detained under order of civil imprisonment and unconvicted prisoners may procure necessaries.

Unconvicted prisoners not compelled to wear prison dress except in certain cases.

Gaoler not to punish prisoner except to carry out a prison sentence or unless refractory or escaping.

21. No such prisoner as is mentioned in the last preceding section shall be compelled to wear prison dress unless such prisoner's dress be deemed insufficient or improper or in an unsanitary condition or unless it is necessary to preserve the same for purposes of justice.

22. No gaoler shall punish any prisoner for any offence except to carry out a sentence for a prison offence as hereinafter provided save that when and as often as it shall be urgently and absolutely necessary to secure any prisoner who has displayed or is threatening violence or who has escaped or who is clearly meditating or attempting to escape the gaoler may in his discretion order such prisoner to be placed in irons or other approved mechanical means of restraint pending the arrival of the resident magistrate and such gaoler shall in every case make an entry in his journal recording the particulars thereof and shall without loss of time send notice of his action to the resident magistrate who shall as soon as may be visit the gaol and confirm or set aside the gaoler's order.

Prisoners not to be subjected to mechanical restraint except in certain events.

23. No prisoner shall be placed in irons or be subjected to any other means of mechanical restraint save for violent conduct or escape or attempted escape or unless there shall be reason for suspecting that a prisoner is meditating escape or violent conduct or unless the medical officer shall in writing advise such restraint and all orders of mechanical restraint shall be recorded in a book to be kept for the purpose and such book shall be submitted to the visiting or resident magistrate on the occasion of each visit and no continuous period of mechanical restraint shall exceed three months without an order under the hand of the minister authorizing the same.

PART V.

POWERS AND DUTIES OF OFFICERS OF CONVICT PRISONS AND GAOLS AND DISCIPLINE OF CONVICTS AND PRISONERS.

Duty of officers of convict prisons to see that sentence of court is carried out.

24. It shall be the duty of the governor or if there be no governor of the deputy governor of any convict prison or gaol or if there be no deputy governor then of the gaoler and of every subordinate officer who is in charge of any convict or prisoner to cause every convict or prisoner who shall be sentenced by any court to any punishment to undergo the same in manner and form as by order on such sentence is directed and for so doing the order of the court or a certified copy thereof shall be sufficient authority to each of the said persons respectively.

Governor and deputy governor of convict prison and gaoler appointed to have powers of police officers.

25. (1) Every governor and deputy governor of a convict prison or gaol and every gaoler shall be deemed to be a police officer and it shall be lawful for the minister from time to time to appoint as he shall deem necessary persons to be and act as police officers at the several convict prisons and gaols and such persons shall be invested with all powers authorities and functions by law belonging to police officers; provided

that any such police officer may be suspended by any governor or deputy governor or by the resident magistrate if there be no governor or deputy governor until the decision of the minister shall be given.

(2) All such police officers as aforesaid are authorized and required to use all lawful means in their power for detaining the convicts and prisoners under their charge in safe custody.

26. (1) In every convict prison and gaol punishment cells shall be provided and appropriated exclusively for the confinement of convicts and prisoners convicted and sentenced for offences mentioned in Part VI.

Punishment cells.

(2) No punishment cell shall be used until it has been certified by the visiting magistrate or if there be no visiting magistrate by the resident magistrate acting upon the report of the medical officer that it can be used as a punishment cell without detriment to the health of convicts or prisoners.

(3) Every cell certified as in this section mentioned shall be distinguished by a number or mark placed in a conspicuous position and shall be referred to by its number or mark in the certificate of the visiting or resident magistrate.

27. Any convict or prisoner who shall escape or conspire with any person to procure the escape of any convict or prisoner or who shall assist or incite any other convict or prisoner to escape from the convict prison or gaol in which he is placed or from any post place or conveyance where or wherein he may be for the purpose of labour or detention or from hospital or while in course of removal in custody from one place to another or otherwise or who shall make any attempt to escape from custody whether inside or outside any building or enclosure or place or conveyance or who shall be in possession of any instrument or other thing with intent to procure his own escape or that of another convict or prisoner shall be liable upon conviction before a court of resident magistrate to imprisonment with hard labour for any period not exceeding two years to commence from the expiration of any period of imprisonment which he shall have been sentenced to undergo and in addition to whipping not exceeding twenty-four strokes and the courts of resident magistrates shall have special jurisdiction to impose any such punishment as is mentioned in this section.

Penalty on convicts and prisoners for escape or attempting to escape.

28. Every person not being an officer of the Prisons Department or a police officer who shall apprehend and secure any convict or prisoner who has escaped as aforesaid and shall cause such convict or prisoner to be lodged in any lock-up or in custody of any governor deputy governor or gaoler of the convict prison or gaol from which such convict or prisoner escaped shall receive out of the public revenue (over and above his just and reasonable expenses) such sum by way of reward as the minister may determine. The minister may offer rewards out of the public revenue to persons who shall give information leading to the apprehension of convicts and prisoners who have escaped.

Rewards for recapture of escaped convicts.

Power of officers to fire upon convicts or prisoners attempting to escape.

29. It shall be lawful for any officer of a convict prison or gaol who is on guard thereat or in charge of any party of convicts or prisoners within or without any convict prison or gaol to be armed with loaded firearms and if any convict or prisoner shall attempt to escape it shall be lawful whenever it is necessary to prevent such escape for any such officer to fire upon any such convict or prisoner and if in acting thus and under the necessity aforesaid he shall kill or wound such convict or prisoner he shall not be guilty of any offence.

Penalty for aiding escape.

30. Every person who aids any convict or prisoner in escaping or attempting to escape from any convict prison gaol or lock-up or who for the purpose of facilitating the escape of any such convict or prisoner supplies or agrees or attempts to supply or aids incites or encourages any other person in supplying him with any mask dress disguise or any other articles instrument or matter or thing or conveys or causes to be conveyed into any convict prison or any place where convicts may be placed or in any gaol or lock-up any letter or token encouraging inciting or showing a desire to give aid in escaping or in breaking any regulation shall be liable on conviction to imprisonment with or without hard labour for any period not exceeding two years.

Penalty of officers receiving or demanding fee.

31. No fee or gratuity shall be paid or payable by any convict or prisoner either on his entrance into commitment to continuance in or discharge from any convict prison gaol or lock-up to any officer or person employed therein and any officer or person receiving or demanding any such fee or gratuity shall be liable on conviction to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding one month or to such period of imprisonment without the option of a fine or to both such fine and such imprisonment.

Penalty of officers selling to convicts and prisoners or being interested in supply of articles to them.

32. No officer of any rank employed in connection with a convict prison or gaol nor any person acting for or employed by him shall sell or receive any benefit or advantage from the sale of any article to any convict or prisoner nor shall any such officer or person directly or indirectly have any interest in any contract or agreement for the supply of any such article. Any person contravening this section shall be liable on conviction to a fine not exceeding one hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months or to such period of imprisonment without the option of a fine or to both such fine and such imprisonment.

PART VI.

TRIAL OF OFFENCES COMMITTED IN CONVICT PRISONS AND GAOLS.

Jurisdiction of governors and resident magistrates to try breach of regulations.

33. (1) The governor or the deputy governor of any convict prison or gaol and the resident magistrate of the district in which a gaol (not under the control of a governor or deputy governor) is situate shall try in such convict prison or gaol as the case may be any contravention by a convict or

prisoner of any regulation whether such contravention has taken place within the convict prison or gaol or outside the same during the period of detention of the convict or prisoner therein.

(2) The term "resident magistrate" in this and the two following sections shall in addition to including an assistant resident magistrate include also a resident justice of the peace within whose jurisdiction a convict prison or gaol not under the control of a governor or deputy governor is situate and such resident justice of the peace shall have special jurisdiction to impose any punishment prescribed for any such contravention aforesaid.

34. The proceedings on any trial within a convict prison or gaol under the powers of the last preceding section shall be in manner and form (as nearly as may be) the same as in courts of resident magistrate in this Colony at the hearing and determination of criminal cases save that there shall be no appeal against any conviction or sentence on such trial.

Procedure in cases tried in prisons to be as in courts of resident magistrate.

35. (1) As often as a governor or deputy governor of a convict prison or gaol or a resident magistrate shall under the jurisdiction conferred by the last two preceding sections sentence any person to a period of imprisonment exceeding twenty-one days or to whipping the records shall within three days of such sentence be transmitted to the Registrar of the Supreme Court Pretoria who shall as soon as may be lay the same before a judge thereof and such judge may upon consideration of the same confirm set aside or reduce such sentence as justice may require; provided that no such sentence of imprisonment shall be suspended pending the decision of the judge; provided further that no sentence of whipping shall be inflicted until the same shall have been confirmed by such judge or in the event of the number of strokes being reduced until notification has been received of such reduction.

Review of sentences for prison offences.

(2) Every sentence imposed by a governor or deputy governor of a convict prison or gaol under the jurisdiction aforesaid and not subject to review under sub-section (1) of this section shall be reviewed by the visiting magistrate of the convict prison or gaol in the following manner: he shall at every visit made by him in accordance with any regulation call for the records of all cases which have been tried since his last visit and which are not subject to review under sub-section (1) and shall then or as soon as may be after his visit examine the same and thereupon may confirm set aside or reduce any such sentence as justice may require.

36. (a) Any convict or prisoner who shall contravene any provision of this Ordinance;

Trial of offences other than prison offences committed in prison.

(b) any person not being a person detained in a convict prison or gaol who shall contravene any provision of this Ordinance or any regulation;

(c) any person who shall in a convict prison or gaol commit any offence at common law or against any statute other than this Ordinance;

shall be brought before a court of resident magistrate to be therein dealt with according to law; provided always that for the trial of any subordinate officer of a convict prison or gaol for a contravention of any regulation the magistrate is hereby authorized and required to hold his court for the trial of such officer at the convict prison or gaol to which he is attached; provided further that if any subordinate officer of a convict prison or gaol shall exceed his leave or be intoxicated whether on or off duty and whether within or without a convict prison or gaol or be guilty of any act or omission tending in any way to impair the discipline of a convict prison or gaol or affecting the due performance of his duty he shall be guilty of an offence and may be tried by the governor or deputy governor of such convict prison or gaol (if there be a governor or deputy governor thereof); and such subordinate officer shall be liable on conviction to a deduction from his pay not exceeding five days pay.

PART VII.

MISCELLANEOUS.

Power of
Lieutenant-
Governor
to make
regulations.

*37. The Lieutenant-Governor may from time to time make alter and rescind regulations not inconsistent with the provisions of this Ordinance

- (1) prescribing the duties respectively of the Director of Prisons and officers of the Prisons Department;
- (2) for the general government and management of convict prisons gaols and lock-ups and for the classification of convicts or prisoners therein and for the setting apart of places in gaols for persons confined by an order of civil imprisonment;
- (3) prescribing the mode of appointment the conditions of service and the duties and conduct of the officers of convict prisons and gaols;
- (4) prescribing the mode of supplying food and determining the scales of diet and the quantity of clothing and necessaries for the officers of convict prisons and gaols and for the convicts or prisoners detained therein;
- (5) for the safe custody of convicts or prisoners when at labour or otherwise;
- (6) as to the procedure for obtaining mitigation or remission of sentences or otherwise to well-conducted convicts and prisoners; and for the supply of food clothing or means of travelling to convicts or prisoners on their discharge;

* For regulations for government of gaols see Govt. Notices Nos. 1349 of 1906 (*Gazette*, 28/12/06); 74 of 1907 (*Gazette*, 18/1/07); 983 of 1907 (*Gazette*, 6/9/07); 431 of 1908 (*Gazette*, 8/5/08); 924 of 1908 (*Gazette*, 18/9/08); 555 of 1909 (*Gazette*, 21/5/09); 1094 of 1909 (*Gazette*, 24/9/09); 475 of 1910 (*Gazette*, 6/5/10). For regulations for government of convict prisons see Govt. Notices Nos. 1348 of 1906 (*Gazette*, 28/12/06); 75 of 1907 (*Gazette*, 18/1/07); 430 of 1908 (*Gazette*, 8/5/08); 556 of 1909 (*Gazette*, 21/5/09); 1093 of 1909 (*Gazette*, 24/9/09); 474 of 1910 (*Gazette*, 6/5/10).

(7) as to the grant and withdrawal of indulgences and privileges to convicts and prisoners and the scale of remuneration to convicts and prisoners for labour performed during detention;

(8) as to the admission of any person within any convict prison or gaol other than the officers thereof and the persons who are or may be detained therein;

(9) as to the receipt and custody by officers of convict prisons and gaols of money valuables or other articles belonging to any convict or prisoner and defining the conditions and circumstances under which payment or delivery of such money valuables or other articles shall be made during the period of imprisonment to such convict or prisoner;

(10) prescribing the powers and duties of medical officers and chaplains of convict prisons and gaols;

(11) prescribing the duties of visiting magistrates of or resident magistrates in relation to convict prisons and gaols;

(12) for prohibiting the supply to convicts or prisoners of intoxicating liquor tobacco narcotics drugs and regulating the introduction into any convict prison or gaol of any article of food drink clothing or of any letters or documents;

(13) prescribing the duties and powers of the inspector of prisons;

(14) for the measuring photographing and taking of finger print impressions or other records of persons confined in any convict prison gaol or lock-up or otherwise detained in custody;

and any regulations may provide penalties for any contravention thereof and different penalties in case of successive breaches

(a) for a contravention by an officer a fine not exceeding twenty pounds and in default of payment of the same imprisonment with or without hard labour for a period not exceeding two months or such imprisonment without the option of a fine or to both such fine and such imprisonment;

(b) for a contravention by a convict or prisoner

(i) solitary confinement not exceeding forty-two days;

(ii) reduced diet not exceeding twenty-eight days in all or fourteen days at one time;

(iii) spare diet not exceeding seven days in all or three days at one time;

(iv) whipping not exceeding twenty-four strokes;

or any or all such punishments; provided always that whipping shall not be imposed as a punishment upon an unconvicted prisoner.

All regulations made under any of the laws hereby repealed shall be deemed to be made under this section and shall remain of force and effect until rescinded or altered as herein provided.

Affixing notice in prisons of provisions as to treatment of prisoners.

38. So much of this Ordinance and of any regulation as relates to the treatment and conduct of convicts or prisoners shall be printed in legible characters both in the English and Dutch languages and fixed up in conspicuous parts of every convict prison or gaol and in such a manner as to be legible to officers convicts and prisoners therein.

Discharge of convicts.

39. Every convict or prisoner whose term of imprisonment shall expire on a Sunday shall be entitled to his discharge on the Saturday next preceding and any officer in whose custody he may be is authorized in such event to discharge him on the last-mentioned day.

Medical certificate on death of convict and inquest if necessary.

40. It shall be the duty of every resident magistrate to require from the medical officer of a convict prison or gaol situate within his district or if for any cause such cannot be obtained from the medical officer then from some medical practitioner a certificate showing the cause of death of every convict or prisoner who may die at any such convict prison or gaol whether from natural causes violence or sentence of a court of law and if a resident magistrate shall deem it necessary he shall hold an inquest on the body of such convict or prisoner as far as may be in accordance with the Inquests Proclamation 1901 or any law amending the same.

Officer of convict prison or gaol to be dismissed from office if convicted of assaulting prisoner.

41. Any officer of a convict prison or gaol who shall be convicted of assaulting any convict or prisoner may in addition to any other penalty imposed therefor be dismissed from his office and if he shall have been sentenced for such offence to a fine of five pounds or upwards or to any period of imprisonment without the option of a fine he may not be reappointed to the same office or appointed to any office in the public service of the Colony.

Penalty for loitering about convict prisons and refusing to depart therefrom.

42. Any person loitering about any convict prison gaol or lock-up or other place where convicts or prisoners may be for the purpose of imprisonment or labour who refuses or neglects to depart therefrom upon being duly warned so to do by any police constable or by any officer of a convict prison or gaol shall be guilty of an offence and shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding one month or to a fine not exceeding ten pounds and in default of payment of the same to imprisonment with or without hard labour for a like period.

Agreements for labour of convicts.

43. Subject to regulation the Director of Prisons may with the approval of the minister contract with any divisional council or municipal council or other public body or with any company or individual for the employment of convicts and prisoners who are under sentence of hard labour upon such terms and conditions as to safe custody and maintenance as may be agreed between such parties and any place agreed upon for such employment shall be deemed to be a convict prison or gaol for the purpose of offences by prisoners and convicts and officers in charge of the same.

44. When any court of resident magistrate or court of resident justice of the peace held at a place where there is no prison shall sentence a person to imprisonment for any period not exceeding one month it shall be competent for such court to direct such imprisonment to be in the nearest lock-up in lieu of in any gaol.

Imprisonment not exceeding one month may under an order be in nearest lock-up.

PART VIII.*

REFORMATORIES.

†45. It shall be lawful for the Lieutenant-Governor to establish reformatories for the reception and custody of juvenile offenders and in every such reformatory the males shall be kept separate and apart from the females and white persons from coloured persons. The establishment of a reformatory under this section shall be notified in the *Gazette* together with a description of the boundaries thereof.

Establishment of reformatories for juvenile offenders.

‡46. Whenever any juvenile who in the opinion of the court before which he is charged is not less than twelve years and is less than sixteen years of age is convicted either upon indictment or summary trial of an offence punishable with imprisonment the court may in addition to or in lieu of sentencing him to imprisonment order that he be sent to a reformatory established under this Ordinance and be there detained for a period of not less than two years and not more than five years; provided that such period of detention in a reformatory expires at or before such juvenile attains the age of eighteen years and the court may further order that at the expiration of any such sentence of imprisonment or detention in a reformatory or in lieu thereof that such juvenile be apprenticed to some useful calling or occupation until he has attained the age of eighteen years.

Convicted juvenile may be sentenced to detention in reformatory in addition to or in lieu of imprisonment or detention in a reformatory.

47. (1) Whenever any court shall order any juvenile to be detained in a reformatory established under this Ordinance a warrant shall be issued by the court for that purpose setting forth the offence of which such juvenile has been convicted and the period for which such juvenile shall be so detained and the reformatory to which such juvenile shall be sent and the age of such juvenile and such warrant shall be forwarded to the warden of such reformatory and shall be the authority for the conveyance of the juvenile thereto and his detention therein.

Warrant to detain juvenile.

(2) In any proceedings taken for anything done in obedience to such warrant aforesaid the fact that it was done under the warrant shall be sufficient answer thereto without setting forth anything which has transpired previously and the production of such warrant shall be sufficient evidence in support of such answer.

* See Act No. 38 of 1909, sec. 13 as to board of visitors, and sec. 15 as to age limit.

† Emmasdale Reformatory established by Govt. Notice No. 235 of 1909 (*Gazette*, 26/2/09).

‡ See Act No. 38 of 1909, sec. 15, amending the age limit.

How warrant to be obeyed.

48. Every warrant issued under this Part of this Ordinance shall be executed and obeyed by the person to whom the same is directed and delivered and the production thereof with a statement annexed thereto signed by the warden of a reformatory that the juvenile named in such warrant was duly received into and is at the signing thereof detained in such reformatory shall in all proceedings whatsoever be sufficient evidence of the facts stated in such warrant and of the subsequent detention and identity of the juvenile named therein.

Power of removal from inmate as reformatory to another.

49. The Lieutenant-Governor may by an order under the hand of the minister at any time during the detention of any juvenile in a reformatory remove any such juvenile to any other reformatory established under this Ordinance and may also order the release of any juvenile from the reformatory in which he may be detained and he shall upon the production of any such order be removed or discharged in accordance therewith.

Power to bind inmate as apprentice.

50. At any time before the expiration of a warrant authorizing the detention of any juvenile in a reformatory the resident magistrate of the district in which such reformatory is situate or of the district in which such juvenile shall be detained may bind him as apprentice to any useful calling or occupation in the same manner in which destitute children are now authorized to be bound by any law and such binding shall be as effectual as if such juvenile were of full age and had bound himself; provided that if such juvenile shall have a parent or guardian alive no such apprenticeship shall take place without the consent of any such parent or guardian.

Provisions of articles of apprenticeship.

51. The resident magistrate aforesaid may in any articles of apprenticeship under this Ordinance provide that such portion of the wages to become due to such apprentice as he may think fit shall be deposited at such times and in such manner as he shall determine in any post office savings bank of this Colony on account of such apprentice and every such deposit shall be deemed and allowed as a payment to such apprentice but no portion thereof shall be withdrawn by such apprentice without the consent in writing of the resident magistrate until the expiration of the apprenticeship.

Who may visit reformatories.

52. All members of the Executive Council all members of the Legislature all judges of the Supreme Court and the resident magistrate and all resident justices of the peace of the district in which the reformatory is situate shall be entitled to visit such reformatory and shall have admission to the same accordingly and the resident magistrate and all resident justices of the peace shall further be entitled to have access at convenient times to every juvenile in the district apprenticed under this Ordinance.

Visitors book: entries therein.

53. Every person who by virtue of the last preceding section shall visit any reformatory may inscribe in a book (to be for that purpose provided and kept by the warden of every reformatory) any remarks or observations which he may think fit to make touching or concerning such reformatory and

the warden teachers officers servants and inmates thereof or any of them and may sign his name to such remarks or observations and every such book shall be carefully preserved by every such warden and any warden who shall obliterate or destroy any such books or any such remarks or observations or any signature thereto shall be liable on conviction to a fine not exceeding twenty-five pounds and in default of payment of the same to imprisonment with or without hard labour for a period not exceeding three months.

54. If the warden of any reformatory or any teacher officer or servant thereof shall wilfully or negligently allow any juvenile detained therein to escape therefrom every such offender shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment of the same to imprisonment with or without hard labour for any period not exceeding six months or to such period of imprisonment without the option of a fine.

Penalties for allowing escapes.

55. If any juvenile apprenticed or bound under this Ordinance shall desert or abscond from the service of his master it shall be lawful for any court before which such apprentice shall be brought upon proof of such facts to order in addition to any punishment which may be imposed that the child be returned to the service of such master or that such child be detained in a reformatory until the attainment of an age not exceeding eighteen years.*

Apprentices absconding: penalties.

56. If any juvenile detained in any reformatory shall abscond therefrom or wilfully damage or destroy any property in or belonging thereto such juvenile if a male shall be liable on conviction to a penalty of whipping in manner hereinafter provided or whether a male or a female to reduction of diet and solitary confinement in accordance with regulations and the resident magistrate of the district may order any juvenile convicted of absconding to be sent back to the reformatory and to be there detained till the attainment of the age of eighteen years* or of such lesser age as such resident magistrate may determine.

Absconding or escaping: penalties.

57. In case any whipping shall be ordered under the provisions of the last preceding section the order shall specify the number of cuts to be inflicted and in the case of an offender under the age of fourteen years such number shall not exceed twelve and in no case shall exceed twenty and in all cases the instrument used shall be a cane and on the occasion of every such whipping there shall be present the warden of the reformatory and the medical officer thereof who shall sign in the record book the minute recording the particulars of such whipping.

In cases of whipping.

58. Any person who shall directly or indirectly counsel incite or induce by letter or otherwise any juvenile detained in any reformatory to abscond or escape therefrom or break his apprenticeship and abscond from his master before his regular discharge or before the expiration of such apprenticeship or who shall aid or abet any such inmate in

Accessories to escape or absconding.

* See Act No. 38 of 1909, sec. 15, as to age limit.

absconding or escaping or who knowing such juvenile to have absconded or escaped shall harbour or conceal or assist in harbouring or concealing him or shall prevent him from returning to such reformatory or to his master shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months or to such period of imprisonment without the option of a fine.

Appointment of officer under this Ordinance: how proved.

59. The production of the *Gazette* containing the notification of the establishment by the Lieutenant-Governor of any place as a reformatory under this Ordinance or notifying the appointment of any person as an officer of a reformatory shall be conclusive evidence of the facts stated therein in any proceedings in any court.

Limitations of actions against officers.

60. All civil proceedings to be brought against any person for anything done in pursuance of this part of this Ordinance shall be commenced within six months next after the act complained of; and notice in writing of such proceedings and the cause thereof shall be given to the defendant one month at least before such commencement.

Power to make regulations for the management of reformatories.

¶61. The Lieutenant-Governor may from time to time make alter and repeal regulations not inconsistent with this Ordinance

- (a) for the classification treatment instruction and employment of juveniles detained in reformatories;
- (b) as to the food and clothing of such juveniles;
- (c) as to the discipline and good order of such juveniles and their punishment for breach of discipline;
- (d) as to the appointment and duties of wardens guards instructors attendants and other officers employed at reformatories the removal of such officers and the conditions of their service.

The provisions of section *thirty-seven* relating to punishments which may be imposed on prisons officers for breaches of regulations therein mentioned shall apply *mutatis mutandis* in the case of breaches of duty by officers of reformatories.

Title.

62. This Ordinance may be cited for all purposes as the Prisons and Reformatories Ordinance 1906.

SCHEDULE.

Laws Repealed.	Extent of Repeal.
Law No. 14 of 1880 ..	Articles <i>one, two, four, five, six, seven, nine, ten, twelve, thirteen, fourteen, fifteen, eighteen, nineteen, twenty-one, twenty-two, thirty-two, and thirty-three</i> (being the unrepealed articles).
Proclamation (Transvaal) No. 30 of 1902	Sections <i>one and two</i> (being the unrepealed sections).
Ordinance No. 36 of 1902 ..	Sections <i>one and two</i> .
Ordinance No. 45 of 1903 ..	Sections <i>four and five</i> .
Ordinance No. 2 of 1904 ..	Sections <i>one, three, four, and five</i> (being the unrepealed sections).
Ordinance No. 20 of 1904 ..	The whole.

† For regulations Emmasdale Reformatory see Govt. Notice No. 237 of 1909 (*Gazette*, 26/2/09).

No. 7 of 1906.] [Promulgated 20th July, 1906.

AN ORDINANCE

TO AMEND THE EPIDEMIC DISEASE AND HOSPITAL COMMITTEES ORDINANCE 1905.

Assented to 14th July, 1906.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. Sub-section (1) of section *one* of the Epidemic Disease and Hospital Committees Ordinance 1905 shall be and is hereby amended by the repeal of paragraph (a) thereof and the substitution therefor of the following new paragraph:—
(a) *For text, see Ordinance 3, 1905, section one (1) (a).*

Amendment of sub-section (1) of section *one* of Ordinance No. 3 of 1905.

2. Penalties may be imposed by any such regulations aforesaid for a breach thereof and different penalties may be imposed in the case of successive or continuous breaches but no such penalty shall exceed fifty pounds. The provisions of sections *fifty* to *fifty-five* inclusive of the Municipal Corporations Ordinance 1903 shall *mutatis mutandis* apply as if the regulations aforesaid were bye-laws in force in a municipality and the committees aforesaid were municipal councils and the areas for which they are appointed were municipalities.

Penalties for breach of regulations.

3. Any committee constituted by Proclamation No. 11 (Administration) 1906 and Proclamation No. 20 (Administration) 1906 shall be deemed to have been from the date of such Proclamation constituted under section *one* of the Epidemic Disease and Hospital Committees Ordinance 1905 as amended by this Ordinance and all regulations published under the said proclamations and all penalties heretofore imposed for breaches of such regulations shall be deemed to have been lawfully made and imposed.

Validation of constitution of certain existing committees and of regulations enforced by the same.

4. This Ordinance may be cited for all purposes as the Epidemic Diseases and Hospital Committees Amending Ordinance 1906.

Title.

No. 8 of 1906.]

[Promulgated 30th July, 1906.]

AN ORDINANCE

TO FURTHER AMEND THE LAW RELATING TO THE SALE OF
INTOXICATING LIQUOR.

Assented to 27th July, 1906.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Interpreta-
tion of term.

1. In this Ordinance the term "principal law" shall mean the Liquor Licensing Ordinance 1902.

Amendment
of section *two*
of Ordinance
No. 32 of 1902.

2. Section *two* of the principal law shall be and is hereby amended by the addition to sub-section (*a*) thereof of the following new paragraph:—

(5) *For text, see Ordinance 32, 1902, section two (5).*

Amendment
of sub-section
(1) of section
seven of
Ordinance
No. 32 of
1902.

3. Sub-section (1) of section *seven* of the principal law shall be and is hereby amended by the addition thereto of the following new paragraph (*e*):—

(e) *For text, see Ordinance 32, 1902, section seven (1) (e).*

Amendment
of sub-
section (5) of
section *seven*
of Ordinance
No. 32 of
1902.

4. Sub-section (5) of section *seven* of the principal law shall be and is hereby amended by the addition thereto of the following words:—

For text, see Ordinance 32, 1902, section seven (5).

Amendment
of sub-
section (7) of
section *seven*
of Ordinance
No. 32 of
1902.

5. Sub-section (7) of section *seven* of the principal law shall be and is hereby amended as follows:—

(i) by the omission from paragraph (*c*) thereof of the words "save such as is mentioned in the next succeeding paragraph (*d*)";

(ii) by the omission therefrom of paragraph (*d*).

Repeal of sub-
section (8) of
section *seven*
of Ordinance
No. 32 of
1902 and of
substitution
of new
provisions.

6. Sub-section (8) of section *seven* of the principal law shall be and is hereby repealed and there shall be substituted therefor the following provisions:—

(8) *For text, see Ordinance 32, 1902, section seven (8).*

Amendment
of section
eight of
Ordinance
No. 32 of
1902.

7. Section *eight* of the principal law shall be and is hereby amended by the omission therefrom of the words "wine or" and by the insertion therein immediately after the word "article" of the words "save as is otherwise provided in the Customs Amendment Ordinance 1906 or any regulations made thereunder".

8. Section *nine* of the principal law shall be and is hereby amended by the omission therefrom of the words "wine or".

Amendment of section *nine* of Ordinance No. 32 of 1902.

9. Section *ten* of the principal law shall be and is hereby amended by the substitution of the word "seven" for the word "six" in sub-section (2) thereof.

Amendment of section *ten* of Ordinance No. 32 of 1902.

10. Section *thirty-four* of the principal law shall be and is hereby amended by the insertion of the following proviso immediately after the words "accommodation of the public":
For text, see Ordinance 32, 1902, section thirty-four.

Amendment of section *thirty-four* of Ordinance No. 32 of 1902.

11. Section *forty-two* of the principal law shall be and is hereby amended:

Amendment of section *forty-two* of Ordinance No. 32 of 1902.

(1) by the insertion immediately after the words "such insolvent" of the words "and in the case of liquidation the official liquidator";

(2) by the addition to the end of the section of the words:
For text, see Ordinance 32, 1902, section forty-two.

12. Section *fifty-two* of the principal law shall be and is hereby amended by the omission therefrom of the words "or in respect of the same premises".

Amendment of section *fifty-two* of Ordinance No. 32 of 1902.

13. Section *eighty-two* of the principal law shall be and is hereby amended by the addition immediately before the word "lodging" in the said section of the words "boarding or".

Amendment of section *eighty-two* of Ordinance No. 32 of 1902.

14. No person shall convey or cause to be conveyed from any premises in any town village or municipality to any other premises or to any place any liquor in quantities as great as is mentioned in sub-section (1) of section *seven* of the principal law unless he shall be in possession of a permit issued by the resident magistrate of the district or a person authorised by him or in the case of a detached sub-district by the assistant resident magistrate thereof or if there be no resident magistrate or assistant resident magistrate by the resident justice of the peace having jurisdiction in the area from which such conveyance of liquor is to take place.

Liquor in certain quantities not to be removed without a permit.

*Every such permit shall be in the form prescribed by notice in the *Gazette* and shall state the description quantity and quality of liquor which the holder is authorised to convey or cause to be conveyed under it the premises from which and to which the same is to be conveyed the name and address of the person in charge of the liquor and of the person to whom the same is to be delivered and shall further state whether such liquor if spirituous liquor was distilled in South Africa or imported from oversea; and it shall be a condition of every such permit that it shall accompany the person conveying the liquor and be produced on demand to any magistrate justice of the peace police officer or constable.

* For form of permit see Govt. Notice No. 746 of 1906 (*Gazette*, 30/7/06).

Any person who shall contravene the provisions of this section or the conditions of any permit granted under it shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months or to both such fine and such imprisonment and any liquor conveyed in contravention of this section or such permit shall be forfeited.

No permit shall be issued under this section for the conveyance of spirituous liquor distilled in this Colony unless the applicant shall satisfy the issuer that the excise duty payable on it by law has been paid or secured.

Any magistrate justice of the peace police officer or constable may at all times demand from the person in charge of liquor being conveyed in the quantities aforesaid or of any vehicle which is suspected of being used to convey liquor in such quantities the permit required by this section.

Nothing in this section contained shall apply to any person conveying or causing to be conveyed liquor sold under the authority of a brewers liquor licence.

15. The provisions of section *fifty-six* of the principal law as amended by section *four* of the Liquor Licensing Further Amendment Ordinance 1903 shall apply to section *seven* of the principal law as hereby amended.

16. Whenever any holder of a licence granted under the principal law or any amendment thereof shall be a company (not being a firm or partnership) the secretary and every manager or director of such company shall be liable to the penalties prescribed for a contravention of such principal law or amendment by any such company and in case such licence holder is a firm or partnership every member of such firm or partnership shall be liable to such penalties for such contravention by such firm or partnership; provided always that nothing in this section shall be deemed to exempt from liability to such penalties any other person who is lawfully found guilty of a contravention of any such law.

17. This Ordinance may be cited for all purposes as the Liquor Licensing Amendment Ordinance 1906 and it shall be read as one with the principal law or any amendment thereof and shall take effect from and after the first day of August, 1906.

Applicability
of sub-section
(7) of section
four of
Ordinance
No. 17 of 1903.

Persons liable
to penalties
in cases where
licence holder
is a company
or partner-
ship.

Title and date
of taking
effect.

No. 12 of 1906.] [Promulgated 17th August, 1906.]

*AN ORDINANCE

TO FURTHER AMEND THE LABOUR IMPORTATION ORDINANCE 1904
AND TO AMEND THE LABOUR IMPORTATION AMENDMENT
ORDINANCE 1905.

Assented to 9th August, 1906.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. Section *twenty-nine* of the Labour Importation Ordinance 1904 shall be and is hereby amended by the addition thereto of the following new sub-section:—

“(15) For the prevention of gambling and of the possession of gaming appliances by labourers whether in or outside any mine or compound”;

and the provisions of section *thirty* of the said Ordinance shall apply to such new sub-section.

2. Sub-section (3) of section *one* and section *six* of the Labour Importation Amendment Ordinance 1905 shall be and are hereby repealed.

3. This Ordinance may be cited for all purposes as the Labour Importation Amendment Ordinance 1906 and shall be read as one with the Labour Importation Ordinance 1904 and the Labour Importation Amendment Ordinance 1905.

Amendment
of section
twenty-nine
of Ordinance
No. 17 of
1904.

Repeal of
sub-section
(3) of section
one and
section *six* of
Ordinance
No. 27 of
1905.

Title.

* See Act No. 19 of 1907.

No. 13 of 1906.] [Promulgated 24th August, 1906.]

AN ORDINANCE

TO AMEND THE CROWN LAND DISPOSAL ORDINANCE 1903.

Assented to 18th August, 1906.

WHEREAS it is expedient to amend the Crown Land Disposal Ordinance 1903;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Amendment
of section
seven of
Ordinance
No. 57 of
1903.

1. Section *seven* of the Crown Land Disposal Ordinance 1903 shall be and is hereby amended by the omission from subsection (1) thereof of the word "shall" and by the substitution therefor of the word "may".

Penalty for
trespassing
on and
refusing to
depart from
Crown land.

2. Any person found trespassing upon Crown land may be required by any resident magistrate assistant resident magistrate justice of the peace or police officer or constable or by some person acting under the authority of the Commissioner of Lands to forthwith quit such land and take with him all goods and persons brought by him thereon and to state his name and ordinary place of abode and any person who shall upon such requirement aforesaid refuse to depart or delay his departure therefrom with all such goods and persons aforesaid or refuse to state his name and ordinary place of abode shall upon conviction be liable to a fine not exceeding twenty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding one month or to such imprisonment without the option of a fine and all reasonable force may be used by any such officer aforesaid to effect such immediate departure.

Title.

3. This Ordinance may be cited for all purposes as the Crown Land Disposal Amendment Ordinance 1906 and shall be read as one with the Crown Land Disposal Ordinance 1903.

No. 14 of 1906.]

Promulgated 24th August, 1906.

AN ORDINANCE

TO APPLY A SUM OF MONEY FOR THE SERVICE OF THE YEAR
ENDED THE 30TH DAY OF JUNE, 1905.

Assented to 18th August, 1906.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. The public revenue of this Colony is hereby charged towards the service of the year ended the 30th day of June 1905 with a sum of eight hundred and sixty-eight pounds fifteen shillings and seven pence in addition to the sums mentioned respectively in the Appropriation Ordinance (No. 3) 1904 and the Appropriation Ordinance (No. 2) 1905.

Public revenue to be charged with
£868 15s. 7d.

2. The money granted by this Ordinance shall be applied to the purposes and services set forth in the Schedule annexed hereto.

How to be applied.

3. The moneys granted by this Ordinance shall not be issued or applied to any use intent or purpose other than the particular services to which the said amounts have been granted respectively by this Ordinance.

Not to be applied otherwise than as granted.

4. The Colonial Treasurer being duly authorized thereto by warrant under the hand of the Lieutenant-Governor shall issue and pay from time to time such sums of money as shall be required for the purposes hereinbefore mentioned not exceeding in the whole the sums respectively in that behalf specified and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant; and the receipts of the persons to whom such sums shall have been so paid shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given.

The Treasurer to make payments under warrant of the Lieutenant-Governor.

5. This Ordinance may be cited as the Appropriation Ordinance (No. 1) 1906.

Title.

SCHEDULE.

No. of Vote.	Title of Vote.	Accounting Officer.	Amount.
XI	Labour Importation	Superintendent of Foreign Labour	£ 858 15 7
XXXI	Public Works	Secretary for Public Works	10 0 0
		Total ..	£868 15 7

No. 15 of 1906.]

[Promulgated 24th August, 1906.]

AN ORDINANCE

TO APPLY A SUM OF MONEY FOR THE SERVICE OF THE YEAR
ENDED THE 30TH DAY OF JUNE 1906.

Assented to 18th August, 1906.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Public
revenue
to be
charged
with £79,648.

1. The public revenue of this Colony is hereby charged towards the service of the year ended the 30th day of June 1906 with a sum of seventy-nine thousand six hundred and forty-eight pounds in addition to the sum mentioned in the Appropriation Ordinance (No. 3) 1905.

How to be
applied.

2. The money granted by this Ordinance shall be applied to the purposes and services set forth in the Schedule annexed hereto.

Not to be
applied
otherwise
than as
granted.

3. The moneys granted by this Ordinance shall not be issued or applied to any use intent or purpose other than the particular services to which the said amounts have been granted respectively by this Ordinance.

The Treasurer
to make pay-
ments under
warrant of the
Lieutenant-
Governor.

4. The Colonial Treasurer being duly authorized thereto by warrant under the hand of the Lieutenant-Governor shall issue and pay from time to time such sums of money as shall be required for the purposes hereinbefore mentioned not exceeding in the whole the sums respectively in that behalf specified and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant; and the receipts of the persons to whom such sums shall have been so paid shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given.

Title.

5. This Ordinance may be cited as the Appropriation Ordinance (No. 2) 1906.

SCHEDULE.

No. of Vote.	Title of Vote.	Accounting Officer.	Amount.
VII	Master of the Supreme Court	Secretary to the Law Department	£136
IX	Magistrates	Secretary to the Law Department	986
XIII	Colonial Secretary, Division 1	Assistant Colonial Secretary, Division 1	32,301
XVI	Education	Director of Education	7,218
XIX	Census	Commissioner of Census	5,000
XXII	Grants-in-Aid (General)	Assistant Colonial Secretary, Division II	4,695
XXIV	Native Affairs	Secretary for Native Affairs	4,717
XXXIX	Customs	Director of Customs	3,870
XXXI	Pensions and Gratuities	Accountant-General	4,225
XXXII	Miscellaneous	Accountant-General	6,029
XXXIII	Selati Railway	Accountant-General	1,872
XXXV	Labour Importation	Superintendent of Foreign Labour	1,896
XXXIX	Agriculture and Forests	Director of Agriculture	6,703
		Total	£79,648

No. 16 of 1906.]

[Promulgated 24th August, 1906.]

•AN ORDINANCE

TO APPLY A SUM OF MONEY FOR THE SERVICE OF THE YEAR
ENDING THE 30TH DAY OF JUNE 1907.

Assented to 18th August, 1906.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. The public revenue of this Colony is hereby charged towards the service of the year ending the 30th day of June 1907 with a sum of three million seven hundred and sixty-one thousand one hundred and thirty-two pounds.

Public revenue to be charged with £3,761,132.

2. The money granted by this Ordinance shall be applied to the purposes and services set forth in the Schedule annexed hereto.

How to be applied.

3. The moneys granted by this Ordinance shall not be issued or applied to any use intent or purpose other than the particular services to which the said amounts have been granted respectively by this Ordinance.

Not to be applied otherwise than as granted.

4. The Colonial Treasurer being duly authorized thereto by warrant under the hand of the Lieutenant-Governor shall issue and pay from time to time such sums of money as shall be required for the purposes hereinbefore mentioned not exceeding in the whole the sums respectively in that behalf specified and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant; and the receipts of the persons to whom such sums shall have been so paid shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given.

The Treasurer to make payments under warrant of the Lieutenant-Governor.

5. This Ordinance may be cited as the Appropriation Title Ordinance (No. 3) 1906.

SCHEDULE.

SCHEDULE OF ESTIMATED EXPENDITURE FOR THE YEAR 1906-07.
ORDINARY EXPENDITURE.

No. of Vote.	Title of Vote.	Accounting Officer.	Amount.
			£
I	H. E. the Lieutenant-Governor	Private Secretary to H.E. the Lieutenant-Governor	5,859
II	Executive and Legislative Councils	Clerk of the Councils	13,911
III	Labour Importation	Superintendent of Foreign Labour	35,874
IV	Attorney-General	Secretary to the Law Department	34,313
V	Sheriff of the Transvaal	Secretary to the Law Department	7,497
VI	Commissioner of Patents	Secretary to the Law Department	4,207
VII	Registrar of Deeds	Secretary to the Law Department	10,774
VIII	Master of the Supreme Court	Secretary to the Law Department	11,406
IX	Superior Courts	Secretary to the Law Department	28,796
X	Magistrates	Secretary to the Law Department	141,714
XI	Transvaal Town Police	Commissioner of Police	355,988
XII	Prisons	Director of Prisons	205,071
XIII	Colonial Secretary, Division I	Assistant Colonial Secretary, Division I	66,783
XIV	Colonial Secretary, Division II	Assistant Colonial Secretary, Division II	27,826
XV	Volunteers	Commandant	202,273
XVI	Education	Director of Education	410,700
XVII	Government Printing and Stationery	Government Printer	63,766
XVIII	Public Health	Medical Officer of Health	70,517
XIX	Lunacy	Medical Superintendent	24,875
XX	Pretoria Hospital	Medical Superintendent	16,063
XXI	Grants-in-Aid to Local Authorities	Assistant Colonial Secretary, Division II	144,325
XXII	Native Affairs	Secretary for Native Affairs	107,433
XXIII	Treasury	Accountant-General	17,488
XXIV	Inland Revenue	Accountant-General	27,239
XXV	Audit Office	Assistant Auditor-General	13,209
XXVI	Customs	Director of Customs	78,920
XXVII	Posts and Telegraphs	Postmaster-General	421,220
XXVIII	Pensions and Gratuities	Accountant-General	20,255
XXIX	Miscellaneous	Accountant-General	10,000
XXX	Selati Railway	Accountant-General	62,150
XXXI	Mines	Secretary to the Mines Department	114,835
XXXII	Lands	Secretary for Lands	31,856
XXXIII	Surveys	Surveyor-General	39,264
XXXIV	Public Works	Secretary for Public Works	441,904
XXXV	Irrigation and Water Supply	Director of Irrigation	61,525
XXXVI	Agriculture and Forests	Director of Agriculture	127,516
		Total Ordinary Expenditure	£3,457,352

SPECIAL EXPENDITURE.

XXXVII	Extension of Telephone System	Postmaster-General	£ 36,280
XXXVIII	Public Works	Secretary for Public Works	250,000
XXXIX	Prisons Workshops	Director of Prisons	7,500
XL	Development of Tobacco Industry	Director of Agriculture	10,000
Total Special Expenditure			£303,780

SUMMARY.

					£
	Ordinary Expenditure	..	..	..	3,457,352
	Special Expenditure	..	..	..	303,780
	Gross Total	..	..	..	£3,761,132

No. 17 of 1906.]

[Promulgated 24th August, 1906.]

AN ORDINANCE

TO PROVIDE OUT OF TREASURY BALANCES FOR THE CONSTRUCTION OF CERTAIN WORKS AND OTHER PURPOSES.

Assented to 18th August, 1906.

WHEREAS it is desirable to make provision out of the balance in the hands of the Colonial Treasurer for certain capital and other expenditure not properly chargeable upon the ordinary revenue of the Colony;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. It shall be lawful for the Lieutenant-Governor by warrant under his hand to authorize the Colonial Treasurer to issue and pay from time to time out of any balances remaining in his hands on the thirtieth day of June 1906 and not appropriated by law for any other purpose such sums of money as shall be required for the purposes specified in the Schedule to this Ordinance not exceeding the amounts respectively specified for such purposes.

2. All sums of money issued under the provisions of this Ordinance shall be applied to the purposes and services set forth in the said Schedule until the same are completed and shall not be used or applied for any other purpose.

3. The Colonial Treasurer being duly authorized as provided herein by warrant under the hand of the Lieutenant-Governor shall issue the sums of money specified in such warrants to the persons designated in the Schedule hereto as accounting officers for the respective votes and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrants; and the receipts of the accounting officers aforesaid shall be to him a full discharge for the sums for which such receipts shall have been given.

4. This Ordinance may be cited as the Appropriation Ordinance (Extraordinary) 1906.

SCHEDULE.

Letter of Vete.	Nature of Expenditure.	Accounting Officer.	Amount.
A	Telegraph and Telephone Construction	Postmaster-General	£ 15,000
B	Extirpation of Cattle Disease	Director of Agriculture	25,000
C	Pretoria Mint	Secretary for Lands	50,000
D	Inter-Colonial Council	Accountant-General	465,000
E	Allowances to Z.A.R. Officials	Accountant-General	50,000
		Total	£605,000

Power of Lieutenant-Governor to authorize issue and payment of certain balances of moneys unappropriated on 30th June, 1906.

Moneys issued under Ordinance to be applied only to purposes set forth in Schedule.

Colonial Treasurer to issue moneys specified in warrant of Lieutenant-Governor to persons designated in Schedule.

Title.

No. 18 of 1906.]

[Promulgated 24th August, 1906.]

AN ORDINANCE

TO PROVIDE OUT OF TREASURY BALANCES FOR THE CONSTRUCTION
OF CERTAIN WORKS AND OTHER PURPOSES.

Assented to 18th August, 1906.

WHEREAS it is desirable to make provision out of the balances in the hands of the Colonial Treasurer for certain capital and other expenditure not properly chargeable upon the ordinary revenue of the Colony;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. It shall be lawful for the Lieutenant-Governor by warrant under his hand to authorize the Colonial Treasurer to issue and pay from time to time out of any balances remaining in his hands on the thirtieth day of June 1905 and not appropriated by law for any other purpose such additional sums of money as shall be required for the purposes specified in the Schedule to this Ordinance not exceeding the amounts respectively specified for such purposes.

Power of Lieutenant-Governor to authorize issue and payment of certain balances of money unappropriated on 30th June, 1905.

2. All sums of money issued under the provisions of this Ordinance shall be applied to the purposes and services set forth in the said Schedule until the same are completed and shall not be used or applied for any other purpose.

Moneys issued under Ordinance to be applied only to purposes set forth in Schedule.

3. The Colonial Treasurer being duly authorized as provided herein by warrant under the hand of the Lieutenant-Governor shall issue the sums of money specified in such warrants to the persons designated in the Schedule hereto as accounting officers for the respective votes and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrants; and the receipts of the accounting officers aforesaid shall be to him a full discharge for the sums for which such receipts shall have been given.

Colonial Treasurer to issue moneys specified in warrant of Lieutenant-Governor to persons designated in Schedule.

4. This Ordinance may be cited as the Appropriation Ordinance (Additional Extraordinary) 1906.

Title.

SCHEDULE.

Letter of Vote.	Nature of Expenditure.	Accounting Officer.	Amount.
C	Public Works	Secretary for Public Works	£ 75,257
D	Extirpation of Cattle Disease	Director of Agriculture	10
G	Advances to Surveyors for survey costs	Surveyor-General	15,000
H	Burgher Land Settlements	Assistant Colonial Secretary, Division II	191,585
J	Purchase of Johannesburg Market Concession	Secretary for Lands	96,061
		Total	£377,913

Repealed by act 17 of 1923

No. 19 of 1906.]

[Promulgated 24th August, 1906.]

AN ORDINANCE

TO PROVIDE FOR THE REGISTRATION OF BIRTHS AND DEATHS
AND FOR OTHER PURPOSES.

Assented to 18th August, 1906.

WHEREAS it is desirable to make provision for the proper registration of births and deaths within this Colony and to establish a central registration office for births marriages and deaths;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

PART I.

GENERAL.

- *1. This Ordinance shall come into operation on a date to be hereafter fixed by Proclamation of the Lieutenant-Governor in the *Gazette* and from and after such date Proclamation No. 27 of 1900 shall be and is hereby repealed. Date of taking effect and repeal of laws.
2. In this Ordinance unless inconsistent with the context
- “adult” shall mean every person of the age of sixteen years and upwards; Interpretation of terms.
- “birth” shall mean the birth of any viable child whether such child be living or dead at the time of birth;
- “body” shall mean any human dead body including the body of any still-born child;
- “burial” shall mean burial in earth interment or any other form of sepulture or the cremation or any other mode of disposal of a body;
- “burial place” means and includes any burial ground whether public or private or any place whatsoever wherein is buried interred cremated or otherwise disposed of or intended to be buried interred cremated or otherwise disposed of one or more bodies;
- †“district registrar” and “assistant district registrar” shall mean respectively any person appointed or lawfully acting in such several capacities for any district or portion of a district under section *four* of this Ordinance;
- “house” shall mean the whole or part of any tenement and any convict prison gaol lock-up reformatory

* Put into operation on 1st January, 1908, by Proc. (Admn.) No. 97 of 1907.

† Field cornets to be assistant district registrars under Act No. 34 of 1907, sec. 6 (3).

hospital asylum barracks public or charitable institution and any tent hut or cart carriage wagon truck van or other vehicle; and any mine or compound used in connection therewith and any other place of residence and any place in or upon which any person may be born or die;

“occupier” shall mean in respect of any convict prison gaol lock-up reformatory hospital asylum barracks or public or charitable institution every governor deputy-governor superintendent gaoler or medical or other officer or person in charge of such convict prison gaol lock-up reformatory hospital asylum barracks or public or charitable institution; and in respect of any mine or mine compound every manager of such mine or compound; and in respect of any house let in lodgings or separate apartments shall mean any person residing in such house who is the person under whom such lodgings or separate apartments are immediately held and in every other case shall mean the owner when in occupation of a house and if the owner be not in occupation every lessee or other person in occupation or having the charge care or custody thereof;

“police officer” shall mean any officer constable or trooper of any police force established in this Colony by any law;

“resident magistrate” shall include an assistant resident magistrate;

“register” shall for the purposes of sections *thirty-six* and *thirty-seven* of this Ordinance include in addition to any “births register” or “deaths register” kept under this Ordinance any books registers or records mentioned in section *thirty-three*;

“Registrar-General” shall mean the officer appointed under section *three* of this Ordinance and any person lawfully acting in such capacity;

“regulation” shall mean any regulation made by the Lieutenant-Governor either under section *five* or section *thirty-two* of this Ordinance.

Appointment
of Registrar-
General.

3. The Lieutenant-Governor may from time to time appoint an officer to be styled the “Registrar-General of Births Marriages and Deaths” whose office shall be the central registration office for all notices of births and deaths for all such returns as shall be required by any regulation to be rendered thereto by district registrars and for returns made under Law No. 3 of 1871 and Law No. 3 of 1897 as amended by the provisions of section *thirty-five*.

Appointment
of district
registrars
and assistant
district
registrars of
births and
deaths.

4. (1) The Lieutenant-Governor may from time to time appoint officers to be styled “district registrars of births and deaths” for each of the magisterial districts of the Colony or for such other area as may be prescribed by notice in the *Gazette* and whenever there shall be no registrar appointed

for a district which is a magisterial district the resident magistrate of such district shall *ex officio* be the registrar.

(2) The Lieutenant-Governor may from time to time appoint persons styled "assistant district registrars of births and deaths."

(3) The duties of any district registrar or assistant district registrar mentioned in this section shall be those prescribed by this Ordinance or by any regulation.

*5. The Lieutenant-Governor may from time to time make alter and repeal regulations not inconsistent with the provisions of this Ordinance:

(a) for the management of the Registrar-General's office or of any district registration office;

(b) prescribing the duties and powers of the Registrar-General and of the district registrars and assistant district registrars;

(c) for obtaining particular information respecting all births and deaths occurring in this Colony and prescribing the nature and extent of such information;

(d) prescribing any forms certificates notices or registers to be used in connection with the registration of births and deaths and as to the use of the same; as to the correction of alterations in and additions to any such forms certificates notices or registers and for the disposal safe custody and preservation of the same;

(e) prescribing the fees payable for searches made or allowed certificates given or for any act performed under the provisions of this Ordinance or any regulation and the persons by whom and to whom such fees are payable; and

(f) generally for the better carrying out of the objects and purposes of this Ordinance.

Such regulations when published in the *Gazette* shall have the full force of law and by such regulations penalties may be imposed for the contravention thereof not exceeding in any case a fine of ten pounds and in default of payment imprisonment with or without hard labour for a period of one month.

6. Books shall be kept by each district registrar and shall be called the "births register" and "deaths register" respectively; and there shall be respectively recorded therein such information as to births and deaths as may be prescribed by regulation.

7. Any information required by this Ordinance or any regulation to be given to the Registrar-General or district registrar or assistant district registrar may be transmitted through the post by prepaid registered letter.

8. It shall be the duty of every district registrar and assistant district registrar to inform himself as far as possible of every birth or death which occurs within his district and after the expiry of the time allowed under this Ordinance for giving any notice or information of any such birth or death if such notice or information shall not have been given the

* For regulations see Govt. Notices Nos. 1403 of 1907 (*Gazettes*, 27/12/07 and 3/1/08); 531 of 1908 (*Gazette*, 12/6/08). See also Govt. Notice No. 1408 of 1907 (*Gazette*, 27/12/07) (native registration areas).

Power of Lieutenant-Governor to make regulations for purposes of Ordinance.

Births and deaths registration books to be kept.

Information may be transmitted by post.

Duties of district registrars and assistant district registrars to inform themselves of births and deaths in their districts.

district registrar or assistant district registrar may by notice in writing under his hand require any person whose duty it is under this Ordinance to give any such information to attend within such time as shall be specified in such notice at the office of such district registrar or assistant district registrar or at any other place mentioned in such notice there to give such district registrar or assistant district registrar or to any other person as may be named in such notice such information as may be necessary concerning the birth or death as the case may be; provided always that when an inquest or enquiry is being held or has been held under the Inquests Proclamation 1901 or any law amending the same concerning the death of any person no such requisition as is in this section mentioned shall be made by any district registrar or assistant district registrar for information as to such death.

Duty of district registrar or assistant district registrar on receipt of notice of birth or death.

9. On receipt by the district registrar or assistant district registrar of any notice information memorandum return or certificate in respect of a birth or death given or transmitted under the provisions of this Ordinance he shall examine the same and cause any defect or inaccuracy therein to be supplied or corrected as far as may be possible and for the purposes of this section he may require any person whose duty it is to give information under this Ordinance to attend and give information in the manner prescribed by the last preceding section.

Registration to be within two years of birth or death.

10. No birth or death shall be registered after the expiration of two years from the date of such birth or death except upon the written authority of the Registrar-General and except upon the particular information prescribed by regulation.

Procedure where birth of child is registered and no name is given or the name given is altered.

11. When the birth of any child has been registered and the name (if any) by which it was registered is altered or if it shall have been registered without a name when a name is given to it the parent or guardian of such child or other person authorized by regulation to procure the alteration or giving of a name may within two years next after the registration of the birth deliver to the district registrar of the district wherein the birth of such child has been registered a certificate in the form prescribed by regulation and signed by the father mother or guardian of the child or such other person and the district registrar on receipt of such certificate and on payment of such fee as may be prescribed by regulation shall without any erasure of any original entry forthwith enter in the births register or in such other book as may be prescribed by the regulation the name mentioned in the said certificate as having been given to the child and shall forthwith transmit the said certificate with all required information to the Registrar-General.

Illegitimate children.

12. In the case of an illegitimate child no person shall be required to give information under this Ordinance as the father of such child concerning the birth of such child and the district registrar or assistant district registrar shall not enter in any register or other book the name of any person as the father of such child except at the joint request of the mother

and of the person who shall in the presence of such district registrar or assistant district registrar acknowledge himself in writing to be the father of such child; such acknowledgment shall be embodied in the certificate or register and such person shall together with the mother sign in the presence of any such registrar the notice certificate or register as the case may be.

13. If any live new-born child or any body shall be found exposed the person finding the same shall as soon as may be give notice to a justice of the peace or police officer and any justice of the peace or police officer who shall know or be informed of the discovery of such child or body and in the case of a new-born child any person in whose charge such new-born child shall be placed and any person holding any official enquiry into or being aware of any circumstances relating to such exposure shall forthwith give to the district registrar or assistant district registrar of the district wherein such child or body shall be found such notice or information as may be prescribed by regulation.

New-born child or body found exposed.

14. Every person holding any inquest or enquiry as to the death of any person under the provisions of the Inquests Proclamation 1901 or any law amending the same shall enquire into such particulars in respect of the death as may be prescribed by regulation and shall forthwith furnish such particulars to the district registrar of the district.

Duties of persons holding inquests to give information to district registrars.

15. The custodian or person having the charge or control of any burial place shall from time to time in accordance with regulation furnish to the district registrar returns setting forth the full name the nationality the last known address the dates of the death and of the burial and so far as has been ascertained the cause of the death of any person whose body shall be buried in such burial place.

Returns by custodians of burial places.

16. Every undertaker or other person having charge of any funeral shall obtain as far as possible and supply to the custodian or person having charge or control of a burial place whenever it has been arranged that a burial shall take place therein such information as may be necessary to enable the said custodian or person aforesaid to frame the returns required by the last preceding section.

Information by undertakers.

17. Any person who shall without reasonable cause or excuse fail or neglect to give or transmit any notice information memorandum return or certificate required by this Ordinance or by any regulation to be given or transmitted shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding one month; provided that no person shall be liable to be convicted under this section if it shall appear that any other person has duly given or transmitted the required notice information memorandum return or certificate.

Penalty for failure to give notices or information.

18. Any person who shall wilfully make or cause to be made for the purpose of being inserted in any notice or information or in any births register or deaths register any

Penalty for false statements made for insertion in information.

false statement relating to any of the particulars required by this Ordinance or by any regulation made thereunder to be made known and registered shall on conviction be liable to the penalties which may by law be imposed for perjury.

PART II.

REGISTRATION OF BIRTHS AND DEATHS IN URBAN AREAS.

Application of
Part II of
Ordinance.

*19. Part II of this Ordinance shall apply to and be in force within such areas as may from time to time by Proclamation in the *Gazette* be defined as urban areas.

Duty of
father or
mother or
occupier of
house to
notify birth
of child.

20. In the case of every child born alive in any such urban area whose birth has not been registered under Proclamation No. 27 of 1900 it shall be the duty of the father or the mother of the child and in the event of the death or absence or other inability of the father and the mother then of any person present at the birth or of the occupier of the house in which a child is born and in the case of the death absence or other inability of such occupier then of the person having charge of the child within seven days next after the day of such birth to give such notice or information thereof as shall be prescribed by regulation to the district registrar of the district or to an assistant district registrar thereof.

Duty of
medical
practitioners
or midwives
in case
of still-born
child.

21. (1) In the case of any still-born child any medical practitioner or registered midwife who was in attendance at the birth or any medical practitioner who has examined the body of such child shall forthwith sign and give without fee or reward to one or other of the persons required by this Ordinance to give information concerning a birth a certificate stating that such child was still-born and any such person who would if the child had not been still-born have been required by this Ordinance to give information concerning the birth shall deliver such certificate as aforesaid to the district registrar of the district or an assistant district registrar thereof and if no medical practitioner or registered midwife was present at the still-birth or no medical practitioner has examined the body of such child such person shall make a solemn declaration before a justice of the peace that such child was not born alive and deliver such declaration within twenty-four hours of such still-birth to such district registrar or assistant district registrar.

(2) Every such district registrar or assistant district registrar upon receiving such notice or information as aforesaid accompanied by such certificate or solemn declaration shall forthwith or as soon after as he is required give without fee or reward either to the person giving the notice or information concerning the birth or to the undertaker or other person having charge of the burial of a still-born child an order under his hand authorizing burial; provided always that no such order shall be given if such registrar is not satisfied that

* For definition of urban areas see Procs. (Admn.) No. 103 of 1907 and No. 80 of 1908 (Pretoria).

the child was still-born in which case he shall report to the resident magistrate such facts concerning the alleged still-birth as are known to him;

22. (1) Whenever any person shall die and his death shall not have been registered under Proclamation No. 27 of 1900 it shall be the duty of every adult present at the death of such deceased person and if there has been no adult present at the death then of the occupier of the house in which any such death shall have happened or in case of the death or absence or other inability of such occupier then of every adult inmate of such house or of any person desiring that a body shall be buried to give notice or information of such death within twenty-four hours of such death in manner prescribed by regulation to the district registrar of the district or an assistant district registrar thereof who if he shall be satisfied that the death was due to natural causes shall give without fee or reward to the person giving the notice or information an order under his hand authorizing burial but no such order shall be given unless a certificate shall be produced by a registered medical practitioner stating that to the best of his knowledge and belief death was due to natural causes. If no such certificate is produced or if the district registrar or assistant district registrar shall not be satisfied that death was due to natural causes he shall forthwith report to the resident magistrate such facts concerning the death as are known to him.

Duty of persons present at death of any person.

(2) The resident magistrate on receipt of any such report as is referred to in sub-section (1) hereof shall instruct the district surgeon failing production of such certificate as is required in sub-section (1) hereof to investigate the cause of death and if in the opinion of such district surgeon death occurred from natural causes the resident magistrate shall give an order authorizing burial and shall communicate the opinion of the district surgeon to the district registrar or assistant district registrar.

23. In the case of the death of any person who has been attended during his last illness by a medical practitioner such practitioner shall unless he believes that such death was not due to natural causes forthwith sign and give without fee or reward to some person required by this Ordinance to give notice or information concerning the death a certificate stating to the best of his knowledge and belief the cause of death and such person shall within twenty-four hours from the receipt thereof deliver such certificate to the district registrar of the district or an assistant district registrar thereof and every such district registrar or assistant district registrar upon receiving such notice or information as aforesaid accompanied by such certificate shall forthwith or so soon after as he is required give without fee or reward either to the person giving the notice or information concerning the death or to the undertaker or other person having charge of the burial an order under his hand authorizing burial.

Duty of medical practitioner in case of death of patient.

Whenever any medical practitioner shall be unable to give the certificate of death as aforesaid he shall forthwith report such inability to the resident magistrate.

Duty of magistrate on receiving report of medical practitioner or district registrar as to still-born births or deaths.

24. As often as any resident magistrate shall receive any such report as in sections *twenty-one* or *twenty-three* is mentioned and where after such enquiry as is provided for under section *twenty-two* he shall not be satisfied that death occurred from natural causes he shall hold an inquest in manner provided by the Inquests Proclamation 1901 or any law amending the same; a resident magistrate holding any such inquest as is in this section mentioned shall at the conclusion thereof or sooner if he thinks fit by an order under his hand authorize burial; every order made in pursuance of this section shall be given to the person who gives notice of a still-birth or death as the case may be or to some other person who causes the body to be buried or to the undertaker or other person having charge of the burial and the resident magistrate making such order shall furnish to the district registrar of the district or to an assistant district registrar thereof who shall have registered or who would but for such inquest have registered such still-birth or death such particulars of such order and of such still-birth or death as may be prescribed by regulation.

Delivery of burial order to person who buries the body.

25. Every such order as aforesaid authorizing the burial of a body shall be produced by the person receiving it or by some person on his behalf to the person who buries the body or performs any funeral or religious service in connection with its burial and the person in charge of the burial place; and any person by whom any such order aforesaid has been received who fails to produce or cause the same to be produced as aforesaid shall be liable on conviction to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding one month.

No burial to take place without a burial order except in cases of urgent necessity.

26. Save in case of urgent necessity (to be defined by regulation) no burial shall take place without an order as aforesaid authorizing burial and every person in the case of such urgent necessity who buries any body or performs any funeral or religious service in connection with the burial of any body and every person in charge of a burial place shall within thirty-six hours after the burial give notice thereof in writing to the district registrar or an assistant district registrar of the district from which such body has been brought for burial or within which such burial or funeral or religious service has been performed and any person contravening any provision of this section shall be liable on conviction to a fine not exceeding twenty-five pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Penalty for failure to deliver certificate to registration officer.

27. Any person to whom a certificate is given by a medical practitioner or registered midwife in pursuance of this Ordinance who fails to deliver such certificate to the district registrar or an assistant district registrar shall be liable on

conviction to a fine not exceeding ten pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding one month.

PART III.

REGISTRATION IN AREAS OTHER THAN URBAN AREAS.

28. Part III of this Ordinance shall apply to any part of the Colony in which this Ordinance is in force and to which Part II thereof does not apply.

Application of
Part III of
Ordinance

29. In the case of every child born alive whose birth has not been registered under Proclamation No. 27 of 1900 it shall be the duty of the father or the mother of the child and in the event of the death absence or other inability of the father and the mother then of any person present at the birth or of the occupier of the house in which a child is born and in case of the death absence or other inability of such occupier then of the person having charge of the child within three months next after such birth to give such notice or information thereof as shall be prescribed by regulation to the district registrar of the district or to an assistant district registrar thereof or to a justice of the peace or to a police officer and every such justice of the peace or police officer shall on receipt of such notice or information forthwith notify such birth to the district registrar or an assistant district registrar.

Duties of
parents in
case of birth
of children.

30. Whenever any person shall die and his death shall not have been registered under Proclamation No. 27 of 1900 it shall be the duty of every adult present at the death of such deceased person and if there has been no adult present at the death then of the occupier of the house in which any such death shall have occurred or in the case of the death or absence or other inability of such occupier of every adult inmate of such house or of any person who has caused a body to be buried to give notice or information of such death within three months of the date thereof in the manner prescribed by regulation to the district registrar of the district or an assistant district registrar thereof or to a justice of the peace or to a police officer and every such justice of the peace or police officer shall on receipt of such notice or information forthwith notify such death to such district registrar or assistant district registrar.

Duties of
persons
present at
death to
notify death to
registration
officer.

31. The provisions of sub-section (1) of section *twenty-one* shall apply for the purpose of notifying information as to the delivery of still-born children in areas to which this part of this Ordinance applies; provided that in such areas the certificate or declaration required by the said sub-section shall be delivered to the registration officer within three months of the delivery of the still-born child.

Application of
provisions of
sub-section
(1) of section
twenty-one in
non-urban
areas.

PART IV.

MISCELLANEOUS.

Power of Lieutenant-Governor to prescribe special provisions as to notice of births and deaths of natives.

*32. (1) Nothing in this Ordinance contained shall apply to the notification of births and deaths of natives but the Lieutenant-Governor may by regulation prescribe special provisions to be in force in any district of the Colony or portion of a district for the notification of births and deaths of natives and may by any regulation prescribe penalties for the breach thereof not exceeding the penalties in section *thirty-eight* mentioned.

(2) The term "native" in this section shall mean a person both of whose parents belong to an aboriginal race or tribe of Africa.

Books kept under Proclamation No. 27 of 1900 to be transmitted to District Registrar for preservation.

33. As soon as may be after the coming into operation of this Ordinance all books registers and other records of births and deaths which are in the custody of any person in any district and which have been kept upon information given prior to or under Proclamation No. 27 of 1900 shall be transmitted to the district registrar of such district and when received by such registrar shall be by him preserved and dealt with in manner prescribed by regulation.

Certificates of births and deaths to be given on application and payment of fee and to be prima facie evidence of facts set forth.

†34. Every person shall be entitled upon application in writing and upon payment of such fee as may be prescribed by regulation to search any births register or deaths register which is by virtue of this Ordinance in the custody or under the control of the Registrar-General or of any district registrar and every person shall be entitled upon like application and payment of fee to receive from the Registrar-General or a district registrar a certificate (in the form prescribed by regulation) of any entry contained in any such register. Every such certificate shall be signed by the Registrar-General or district registrar as the case may be and when purporting to be so signed shall be prima facie evidence in any court of law or public office of the facts set forth therein.

Duplicates of marriage registers to be in future transmitted to Registrar-General.

35. Article *fourteen* of Law No. 3 of 1871 and article *thirteen* of Law No. 3 of 1897 shall be and are hereby amended by the substitution of the words "Registrar-General" for the words "Government Secretary" and "Superintendent of Natives" wherever such words respectively occur in such articles.

Penalty on custodian for negligently losing or injuring registers.

36. Any person having the custody of any register† or certified copy thereof or of any part thereof who shall negligently lose or injure the same or negligently while it is in his custody allow the same to be injured shall be liable on conviction to a fine not exceeding twenty-five pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

Penalty for wilfully destroying or falsifying registers and wilfully giving false certificates.

37. Any person who shall wilfully destroy or injure or render illegible or cause to be destroyed or injured or rendered illegible any register† or certified copy thereof or any part thereof or shall falsely make or counterfeit or cause to be

* For regulations see footnote to sec. 5.

† See Act No. 13 of 1909, sec. 9.

falsely made or counterfeited any part of a register or certified copy thereof or shall wilfully insert or cause to be inserted in any register or certified copy or part thereof any false entry or shall wilfully give any false certificate or shall certify any writing to be a copy of or extract from a register knowing such copy or extract to be false in any part or who shall forge or counterfeit the signature seal impression or stamp of the Registrar-General or any district registrar or assistant district registrar or in the case of a marriage register of any officer empowered or enjoined by law heretofore in force to issue a copy of such register shall be liable upon conviction to imprisonment with or without hard labour for a period not exceeding five years and any person having the custody or care of any register who shall knowingly permit any such offence shall be liable to the same penalty.

Article *twenty-two* of Law No. 3 of 1871 shall be and is hereby repealed.

38. Any person who contravenes or neglects or refuses to comply with any provision of this Ordinance or of any regulation for the contravention of which or for the neglect or refusal to comply with which no penalty is specially provided shall be liable on conviction to a fine not exceeding ten pounds and in default of payment of the same to imprisonment with or without hard labour for a period not exceeding one month.

Penalties for contravention where no penalty specially provided.

39. Notwithstanding anything in the Stamp Duties Amendment Proclamation 1902 contained no affidavit or solemn declaration made by any person for the purpose of complying with any provision of this Ordinance or regulation shall be liable to stamp duty.

Solemn declarations under this Ordinance to be exempt from stamp duties.

40. (1) No person shall remove or cause to be removed or shall in any manner exhume or cause to be exhumed or disturb or cause to be disturbed a body or the remains of a body which may have been interred in a burial place without an authorization in writing under the hand of the Colonial Secretary nor unless such precautions be observed as may be prescribed by the Colonial Secretary or any medical practitioner appointed by him; any person who shall contravene the provisions of this section or who shall fail to observe any such precaution aforesaid shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months or to such imprisonment without the option of a fine.

Penalty for removing bodies or remains of bodies without written authority of Colonial Secretary.

(2) No person shall be guilty of an offence under this section who temporarily or of necessity disturbs or causes to be disturbed a body or the remains of a body for the purposes of interring another body in the same grave.

41. It shall be lawful for a resident magistrate to issue to any person having the charge of the body of a deceased person who has died outside this Colony and whose relatives or friends desire that such body be buried within the district under the jurisdiction of such resident magistrate an order

Burial order in case of persons dying outside Colony if it is desired to bury such persons within Colony.

A.D. 1906.]

*Births Marriages and
Deaths Registration.*

[Ord. No. 19.]

authorizing the burial of such body within such district and notwithstanding anything in sections *twenty-five* or *twenty-six* of this Ordinance contained the production of any such order shall be sufficient authority to any person to bury such body or allow such body to be buried or to perform any funeral or religious service in connection with its burial.

Title.

42. This Ordinance may be cited for all purposes as the Births Marriages and Deaths Registration Ordinance 1906.

No. 21 of 1906.]

[Promulgated 24th August, 1906.]

*AN ORDINANCE

TO FURTHER AMEND THE RAND WATER BOARD EXTENDED
POWERS ORDINANCE 1904.

Assented to 18th August, 1906.

WHEREAS it is expedient to further amend in certain respects the Rand Water Board Extended Powers Ordinance 1904 (hereinafter called the "principal law");

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. The council of the municipality which may hereafter be constituted for Benoni and the area adjacent thereto shall be deemed to be a local authority and a constituent authority for all the purposes of the principal law and the following provisions with reference to the rating roll of the Rand Water Board and the membership of the board shall have effect

Council of Benoni Municipality to be a local and constituent authority for the purposes of the Rand Water Board Extended Powers Ordinance 1904 and provisions as to rating roll and membership of board.

(a) as soon as a rating roll has been framed for the said municipality in accordance with the Local Authorities Rating Ordinance 1903 or any amendment thereof the council thereof shall cause the amount of the total valuation of rateable property within the area of the said municipality to be notified to the secretary of the board and the said amount shall be included in the municipal section of the rating roll of the Rand Water Board as if the same had been notified under section *fifty-nine* of the principal law;

(b) upon such notification as aforesaid being made the number of members of the board shall be increased by the addition of two members of whom one shall be appointed by the said council and one by the Transvaal Chamber of Mines;

(c) the members first appointed by the said council and chamber respectively under this section shall hold office until the new appointment of members of the board by the constituent authorities in accordance with section *seven* of the principal law in the month of January 1909.

2. Section *ten* of the principal law as amended by section *one* of the Rand Water Board Extended Powers Amendment Ordinance 1905 shall be and is hereby further amended by the addition thereto of the following new sub-sections:—

Amendment of section *ten* of Ordinance No. 48 of 1904.

For text, see Ordinance No. 48, 1904, section ten (l) (m) (n).

3. This Ordinance may be cited for all purposes as the Rand Water Board Extended Powers Amendment Ordinance 1906 and shall be read as one with the Rand Water Board Incorporation Ordinance 1903 the Rand Water Board Extended Powers Ordinance 1904 and the Rand Water Board Extended Powers Amendment Ordinance 1905 and this Ordinance and the said Ordinances may be cited together for all purposes as the Rand Water Board Statutes 1903 to 1906.

Title.

* See Act No. 22 of 1909.

B.M. 6 of 1912

No. 22 of 1906.]

[Promulgated 24th August, 1906.]

AN ORDINANCE

TO AMEND THE LOCAL AUTHORITIES RATING ORDINANCE 1904.

Assented to 18th August, 1906.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Amendment
of section *one*
of Ordinance
No. 45 of
1904.

1. Section *one* of the Local Authorities Rating Amendment Ordinance 1904 shall be and is hereby amended by the omission therefrom of the word “thereon” and the substitution therefor of the words “or base metals or minerals thereon or therein.”

Title.

2. This Ordinance may be cited for all purposes as the Local Authorities Rating Amendment Ordinance 1906 and shall be read as one with the Local Authorities Rating Ordinance 1903 and the Local Authorities Rating Amendment Ordinance 1904.

Bowdler 1912

No. 24 of 1906.]

[Promulgated 24th August, 1906.

*AN ORDINANCE

TO FURTHER AMEND THE MUNICIPALITIES ELECTIONS
ORDINANCE 1903.

Assented to 18th August, 1906.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. Notwithstanding anything in Chapter IV of the Municipalities Elections Ordinance 1903 the council shall not be required to make a new voters' roll oftener than once in every three years and any person who is not on the voters' roll in force for the time being in a municipality may at any time apply to the town clerk thereof (in such form as the council thereof may from time to time prescribe) to be enrolled as a voter and the council on being satisfied that such person is qualified under the said Ordinance or any amendment thereof to be so enrolled shall cause the name of such person to be placed on the voters' roll; provided always that

Council not obliged to make voters' roll oftener than triennially and power to add to voters' roll on application.

(i) if the council shall refuse the said application such decision of the council shall be subject to appeal as if it were a decision of the resident magistrate or advocate given under section *nineteen* of the said Ordinance;

(ii) no person shall be enrolled under this section as a voter in any ward upon an application made after the publication of a notice of any election in such ward under section *thirty* of the said Ordinance until such election shall have been held;

(iii) in the case of a municipality in which the elections are conducted under the provisions of sections *four to twelve* of the Municipal Corporations Amendment Ordinance 1904 or any amendment thereof no person shall be enrolled under this section as a voter in the municipality upon an application made after the issue of the magistrate's notice relating to any election therein until such election shall have been held;

(iv) the non-enrolment of any voter upon an application made under this section shall not invalidate any election held after the date of such application.

2. This Ordinance may be cited for all purposes as the Municipalities Elections Amendment Ordinance 1906 and shall be read as one with the Municipalities Elections Ordinance 1903 and any law amending the same.

Title.

* See Act No. 23 of 1909.

No. 25 of 1906.]

[Promulgated 24th August, 1906.]

*AN ORDINANCE

TO AMEND THE OPIUM IMPORTATION ORDINANCE 1905.

Assented to 18th August, 1906.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Repeal of Ordinance No. 36 of 1905.

1. The Opium Importation Ordinance 1905 and subsections (15) and (16) of section *thirty-one* of the Labour Importation Ordinance 1904 as amended by section *eight* of the Labour Importation Amendment Ordinance 1905 shall be and are hereby repealed.

Persons lawfully entitled to sell opium to make returns of the quantity in stock at date of operation of Ordinance.

2. It shall be the duty of all persons who at the date of the coming into operation of this Ordinance are lawfully entitled to keep for sale and sell opium and extract of opium to make a return to the Colonial Secretary of all stocks of opium and extract of opium in their possession and the Colonial Secretary shall issue a permit authorizing the possession of the stocks so declared.

† Every such return shall be made prior to a date to be notified in the *Gazette* and in a form prescribed by regulation.

Any such person aforesaid who fails to make such return as aforesaid within the prescribed period or who sells or is found in possession of opium or extract of opium without having obtained a permit under this section shall be liable on conviction to the penalties mentioned in section *three* of this Ordinance.

Prohibition of importation of opium except under permit issued only to chemists and druggists.

3. (1) From and after the coming into operation of this Ordinance no person (other than a person registered under the Medical Dental and Pharmacy Ordinance 1904 as a chemist and druggist) shall import into this Colony any opium or extract of opium and no such registered chemist and druggist shall import any such substance unless thereto authorized by a permit stating the quantity which may be imported and signed by the Colonial Secretary; and such permit shall be in the form and shall contain such conditions as may be prescribed by regulation.

(2) The Director of Customs may detain any such substance imported into this Colony after the coming into operation of this Ordinance until a permit issued under this section has been produced in respect thereof.

* See Act No. 4 of 1909.

† See Govt. Notice No. 981 of 1906 (*Gazette*, 1/10/06), fixing 2nd October, 1906, as the date prior to which returns to be made, and Govt. Notice No. 970 of 1906 (*Gazette*, 28/9/06) as to form of return.

(3) Any person contravening the provisions of this section or the conditions of any permit issued thereunder shall be liable on conviction to a fine not exceeding five hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months or to such imprisonment without the option of a fine or to both such fine and such imprisonment and any opium or extract of opium suspected of having been unlawfully imported may be seized and if any person be convicted of a contravention of this or the preceding section or the conditions of any such permit aforesaid the opium or extract of opium in respect of which such contravention shall take place shall be forfeited.

4. Every registered medical practitioner or chemist and druggist may purchase opium or extract of opium from any person authorized under section *two* to possess or under section *three* to import such substance; provided that no such purchase shall be effected except upon a request in writing signed by the purchaser stating the quantity which he desires to purchase and such written request shall be retained and preserved by the seller and shall be open to the inspection of the secretary of the Pharmacy Board or of any person authorized by him in writing under his hand in manner prescribed by section *fifty-seven* of the Medical Dental and Pharmacy Ordinance 1904 for the inspection of poisons books kept by registered chemists and druggists.

Conditions of purchase of opium from importers by medical practitioners and chemists.

5. Every person entitled under section *two* to possess or under section *three* to import or under section *four* to purchase opium or extract of opium may keep and sell the same subject to the provisions of section *eight** and shall cause to be entered in a book to be exclusively kept for the purpose

Importers purchasers and sellers to keep books containing records for inspection of secretary of Pharmacy Board and police officer.

- (i) the quantity of opium or extract of opium possessed imported or acquired;
- (ii) the date of its importation or acquisition;
- (iii) the person from whom and the place from which the same was imported or acquired;
- (iv) the quantity which has been disposed of and whether by sale or by process of manufacture; and if such disposal be by sale the date of such sale the name and address of the purchaser and the number of the permit issued under section *eight** of this Ordinance unless the substance aforesaid has been sold under the provisions of section *four* in which case the facts relating to such sale shall be entered in the book.

Every such book shall be so kept as to clearly show in addition to the purchases and sales the amount of opium or extract of opium held in stock and every such book shall be open to the inspection of the secretary of the Pharmacy Board or of any person authorized by him in writing under his hand as prescribed by section *fifty-seven* of the Medical Dental and Pharmacy Ordinance 1904 for the inspection of poisons books kept by registered chemists and druggists and to the inspection also of any police officer of or above the rank of inspector.

* See Act No. 4 of 1909, sec. 1.

Penalties for contravening provisions and requirements of sections *four* and *five*.

6. Any person who shall sell opium or extract of opium to such person as is described in sub-section (1) of section *four* in contravention of the provisions thereof and any such person therein described who shall purchase opium or extract of opium from a person not authorized under section *two* to possess or under section *three* to import such substance and any person required by sections *four* or *five* to keep such written request to purchase or book as is therein described who shall not keep such written request or book or who shall fail to produce the same for inspection when demanded by the secretary of the Pharmacy Board or person authorized by him as aforesaid or police officer aforesaid shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

Penalty for being in possession of opium except for medicinal purposes or unless authorized to keep for sale or sell under this Ordinance.

‡7. Any person who shall have in his possession or on any premises occupied by him any opium or extract of opium (except for medicinal purposes) unless he be a person authorized in accordance with this Ordinance to keep for sale or sell the same shall be liable on conviction in addition to any penalties to which he may be otherwise liable under this Ordinance or any other law to a fine not exceeding five hundred pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding six months or to such imprisonment without the option of a fine or to both such fine and such imprisonment and any such substance found in his possession shall be forfeited.

Opium only to be sold on production of permit.

8. *Repealed by Act No. 4, 1909, section one (1) (with proviso).*

Power to police constable to enter and search premises where it is reasonably suspected that opium is kept in contravention of Ordinance.

9. Any police constable having a written authority from a magistrate justice of the peace or officer of police above the rank of inspector may enter and search any premises place or vehicle if such constable shall have reasonable grounds for suspecting that any opium or extract of opium is kept in contravention of this Ordinance and if any such substance be found on such search it may be seized and removed and on conviction of the owner of the premises place or vehicle or of the person found in possession of the substance of a contravention of any provision of this Ordinance it shall be forfeited; provided always that if it appears that any delay occasioned by obtaining such written authority will defeat the objects of this section such police officer may exercise the powers conferred hereby without any such written authority aforesaid but he shall as soon as possible report what he has done to the chief officer of police of the district or to the resident magistrate.

Evidence and procedure.

10. (1) The burden of proving any fact which would be a defence to a charge of contravening any provision of this Ordinance shall lie upon the person charged.

‡ See Act No. 4 of 1909, sec. 4 (2).

(2) Every person required by this Ordinance to be in possession of a permit to possess import purchase or obtain opium or extract of opium shall be deemed to be without such permit unless he shall produce or give satisfactory proof of possessing the same.

(3) In any indictment summons or other form of charge under this Ordinance it shall be sufficient to set forth the offence charged in the words of this Ordinance or in similar words without negating any exception exemption or qualification.

(4) In any charge of selling or supplying opium or extract of opium to a labourer introduced under the Labour Importation Ordinance 1904 in contravention of or without complying with the provisions of this Ordinance or any regulation made thereunder it shall not be necessary to set out the name of such labourer but it shall be sufficient to allege that such sale or supply was effected to a labourer so introduced.

11. (1) In any contravention of sections *three four five six* or *eight*§ of this Ordinance the person registered as a medical practitioner or chemist and druggist as the case may be shall be liable to the penalties prescribed for such contravention though the act or default constituting such contravention was that of an apprentice clerk servant or agent in the employ of such registered person unless he shall satisfy the court that such act or default was not due to his negligence in the supervision or direction of such apprentice clerk servant or agent.

Persons liable to penalties.

(2) Every director and manager of a company shall be liable to the penalties prescribed for a contravention of this Ordinance by such company.

* 12. The Lieutenant-Governor may from time to time make alter and rescind regulations not inconsistent with the provisions of this Ordinance for the better carrying out of the objects and purposes of any provision or requirement thereof relating to permits and returns of stocks of opium and for defining the substances to be included in the expression "opium" or "extract of opium."

Power to make regulations.

13. This Ordinance may be cited for all purposes as the Opium Trade Regulation Ordinance 1906 and shall come into operation on the first day of October 1906.

Title and date of taking effect.

§ See Act No. 4 of 1909, sec. 1.

* For definition of "opium" and "extract of opium" and for such regulations see Govt. Notice No. 970 of 1906 (*Gazette*, 28/9/06, p. 717).

A.D. 1906.]

Municipal Amending

[Ord. No. 26.]

By Order of the Council (1912) whole except Section 7, 8 & 10

No. 26 of 1906.]

[Promulgated 28th September, 1906.]

AN ORDINANCE

TO FURTHER AMEND THE LAW RELATING TO MUNICIPAL CORPORATIONS.

Assented to 12th September, 1906.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Amendment of section *six* of Ordinance No. 58 of 1903.

1. Section *six* of the Municipal Corporations Ordinance 1903 as amended by section *eighteen* of the Municipal Corporations Amendment Ordinance 1904 shall be and is hereby further amended by the insertion in sub-section (1) thereof immediately after the words "town or village" of the words "or other area" and by the addition at the end of sub-section (8) thereof of the words "and thereafter in whole or in part to withdraw such exemption."

Amendment of section *forty* of Ordinance No. 58 of 1903.

2. Section *forty* of the Municipal Corporations Ordinance 1903 as amended by section *twenty-three* of the Municipal Corporations Amendment Ordinance 1904 shall be and is hereby further amended by the addition thereto of the following new sub-section:—

(15) *For text, see Ordinance No. 58, 1903, section fifty-eight (15).*

Amendment of section *forty-one* of Ordinance No. 58 of 1903.

3. Section *forty-one* of the Municipal Corporations Ordinance 1903 as amended by section *twenty-four* of the Municipal Corporations Amendment Ordinance 1904 shall be and is hereby further amended by the insertion in sub-section (2) thereof immediately after the word "hospital" of the words "committees employing district nurses" and by the addition of the following new sub-section:—

(11) *For text, see Ordinance No. 58, 1903, section forty-one (11).*

Lieutenant-Governor may make regulations. Contravention of Ordinance bye-laws or regulations by company firm or partnership.

4. *Repealed by Act No. 32, 1908, section two.*

5. In case any contravention of the provisions of the Municipal Corporation Ordinance 1903 or any law amending the same or of any bye-law or regulation in force in the municipality is committed by a company firm or partnership the managing director or person having the management or control of the business or property in the case of a company or firm and each partner in the case of a partnership shall be responsible therefor and shall be liable to the penalty provided for such contravention provided however that in case of the cancellation or suspension under section *sixty-two* of the Municipal Corporations Ordinance of 1903 of a

trade licence granted by the council to any company firm or partnership or to any person on behalf of a company firm or partnership any disqualification to hold a licence imposed under the said section may be attached either to such company firm or partnership or to the person who is under this section responsible for the offence in respect of which the order of cancellation or suspension is made or both to the company firm or partnership and such person as to the magistrate making the order shall seem fit.

6. (1) In the case of any municipality the council of which is elected in the manner prescribed by sections *four* to *twelve* inclusive of the Municipal Corporations Amendment Ordinance 1904 a deputy-chairman of the council shall be elected from time to time subject *mutatis mutandis* to the provisions of section *fourteen* of the said Ordinance and such deputy-chairman shall whenever it shall be necessary owing to the death resignation absence illness or incapacity of the chairman do all acts which the chairman as such may do. The fact of the death resignation absence illness or incapacity of the chairman shall be notified by the town clerk or his deputy to the first meeting of the council held after such death resignation absence illness or incapacity has happened or commenced and be recorded in the council's minutes. Such record shall be sufficient authority for all acts done by the deputy-chairman which the chairman as such may do from the date of the death or resignation or the commencement of the absence illness or incapacity of the chairman until a new chairman shall be appointed or the chairman shall resume his duties.

Deputy-chairman of council elected under sections *four* to *twelve* of the Municipal Corporations Amendment Ordinance 1904.

(2) At every meeting of the council of such a municipality the chairman if present shall preside and in case of his absence the deputy-chairman and in case neither the chairman nor deputy-chairman shall be present at any meeting then the councillors present shall elect a temporary chairman from among themselves who shall in the absence of the chairman and deputy-chairman preside at such meeting and if it shall appear to the council at such meeting that the chairman and deputy-chairman are both absent from the municipality or are for any other reason incapable of acting the council may by resolution confer on the temporary chairman elected as aforesaid full authority to do all acts which the chairman as such may do until either the chairman or deputy-chairman is again able to act.

(3) Section *sixteen* of the Municipal Corporations Amendment Ordinance of 1904 shall be and is hereby repealed.

7. Whereas it is expedient that the council of the municipality of Germiston should be enabled to establish and maintain a municipal compound on certain land which is proclaimed under Law No. 15 of 1898 anything in such law notwithstanding and whereas the said council has entered into a notarial agreement with the owners of and the registered holders of certain mining rights on the proclaimed farm Elandsfontein No. 147 Witwatersrand District for the purpose

Provision validating agreement entered into by council of the Germiston Municipality relative to municipal compound on mining ground.

of establishing and maintaining thereon such compound it is hereby declared that the said notarial agreement dated the twenty-sixth day of July 1906 between the said council the Simmer and Jack Proprietary Mines Limited (the owners of the said farm) and the Rand Victoria East Limited (the registered holders of prospecting claims on the portion of the farm the subject of such agreement) the terms of which agreement are fully set forth in the First Schedule hereto shall be deemed to have been lawfully entered into and the same is hereby confirmed as binding on the parties thereto and that notwithstanding anything in Law No. 15 of 1898 contained any municipal compound established and maintained by the said council in terms of the said agreement on the said proclaimed farm shall be deemed to be lawfully established and any buildings now or hereafter erected thereon for the purposes of such compound shall be deemed to be lawfully erected.

Provision validating agreement entered into by council of Boksburg Municipality relative to native location and Asiatic bazaar on proclaimed land.

8. Whereas it is expedient that the council of the municipality of Boksburg should be enabled to establish a native location and an Asiatic bazaar upon a portion of the farm Klippoortje No. 149 District Heidelberg which is proclaimed under Law No. 15 of 1898 anything in such law notwithstanding it is hereby declared that a notarial agreement dated the thirtieth day of July 1906 between the said council and the Klippoortje Estates and Tramway Company Limited (the owners of the said farm) and the Hercules Company Limited (the registered holders of the mining rights on the portion of the farm the subject of such agreement) the terms of which agreement are fully set forth in the Second Schedule hereto shall be deemed to have been lawfully entered into between the parties thereto and is hereby confirmed as binding on such parties and that notwithstanding anything in Law No. 15 of 1898 contained such native location and Asiatic bazaar aforesaid shall be deemed to be lawfully established on the said farm Klippoortje No. 149 District Heidelberg and any buildings now or hereafter erected thereon for purposes of such location or bazaar shall be deemed to be lawfully erected.

Limit of charges to be made by councils for licensing of certain trades.

9. The council may charge for any licence which the council is empowered to issue such fees as may be fixed by the council's bye-laws for the time being in force. Sub-section (3) of section *seventy-two* of the Municipal Corporations Ordinance 1903 as amended by section *thirty-two* of the Municipal Corporations Amendment Ordinance 1904 shall be and is hereby repealed.

Issue of long leases by council to occupiers of Asiatic bazaar and native locations.

10. (1) It shall be lawful for the council to grant leases of plots in any native location or Asiatic bazaar or township established by the council or under its control for any term not exceeding thirty-three years in such form and subject to such conditions as the Lieutenant-Governor may approve.

(2) Such leases shall not require to be executed before a notary public and such leases and cessions thereof shall not require to be registered except in a register to be kept by the

council in accordance with such regulations as the Lieutenant-Governor may prescribe and any such lease and any cession of such lease shall if so registered be valid and binding for all purposes.

Any transfer duty or stamp duty payable on any such lease or cession thereof under any law relating to transfer duty or stamp duty shall be paid in manner prescribed by such regulations aforesaid. The council shall account to the Colonial Treasurer for any transfer duty or stamp duty payable upon any registration effected under such regulations aforesaid.

11. No councillor shall act for the council for reward as an advocate attorney law agent medical practitioner veterinary surgeon architect engineer surveyor accountant or in any other professional capacity.

Prohibition of councillor acting for council in professional capacity for reward.

Any councillor contravening this section shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months and the court before which he is convicted may order that he shall refund to the council the amount of any fees received by him in respect of so acting as aforesaid and that he shall vacate his seat and his seat shall thereupon become vacant.

12. (1) Save as in the preceding section and in section four of the Municipalities Elections Ordinance 1903 provided no councillor shall be prohibited by reason of his office from contracting with the council either as vendor purchaser or otherwise nor shall any contract or bargain entered into by or on behalf of the council in which any councillor shall be in any way directly or indirectly interested be on such account avoided or set aside nor shall any councillor so contracting or being so interested be liable save in the case hereinafter mentioned to account to the council for any profit realized by any such contract or bargain by reason of such councillor holding his office or by reason of the fiduciary relation thereby established.

Provisions as to councillors being interested in contracts with the council.

(2) Where any councillor is interested otherwise than as shareholder in a limited liability company in any contract or bargain with the council which involves according to the terms thereof the expenditure or receipt by the council of one hundred pounds or more it shall be the duty of such councillor before or at the meeting of the council at which such contract or bargain is determined on or approved if his interest then exists or if his interest is subsequently acquired then within a reasonable time and in any case not later than one month after the acquisition of such interest to disclose the same to the council and such disclosure if not made at a meeting of the council may be made by letter addressed to the town clerk which shall be reported by him to the council at the first meeting held after the receipt of such letter and any such disclosure shall be entered on the minutes of the meeting of the council at which the same is made by the councillor or reported by the town clerk; provided however that it shall not be necessary for any such disclosure to be made

(a) by any councillor in the case of any contract or bargain which the council may expressly authorize to be entered into with such councillor in his own name; or

(b) by any councillor who shall have notified in writing to the town clerk subsequent to his last election as councillor that he has any interest in any firm or partnership in the case of any contract or bargain which the council may expressly authorize to be entered into with such firm or partnership.

(3) Any councillor who contravenes this section by omitting to disclose his interest in any contract or bargain with the council as hereby required shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months and the court before which he is convicted may order that he shall account to the council for any profits which may accrue to him in respect of such contract or bargain and that he shall vacate his seat and his seat shall thereupon become vacant; provided however that the court shall not make such order if it is proved that the omission of any councillor to make such disclosure was due to illness absence from the municipality mistake inadvertence or some other like cause and was not due to any want of good faith.

(4) It shall be the duty of the town treasurer or if there be no town treasurer of the town clerk to prepare every month according to the best information which he is able to obtain a statement showing all the contracts or bargains entered into or authorized by the council during the preceding month in which any councillor is interested otherwise than as a shareholder in a limited liability company and the names of the councillors so interested and to lay such statement before the council at the first meeting held after the same has been prepared and such statement shall be included in the minutes of such meeting.

(5) It shall be the duty of the auditor of the accounts of the council appointed by the Lieutenant-Governor to examine from time to time the minutes of the council for the purpose of ascertaining whether the provisions of this section have been complied with and to report to the Colonial Secretary any cases in which it shall appear to him that there has been any failure to comply with such provisions.

13. A councillor shall not in or before the council or any committee thereof vote upon or take part in the discussion of any contract bargain expropriation claim application for licence negotiation or legal proceedings in which he or any person by whom he is employed or whose attorney or agent he is has directly or indirectly any pecuniary interest.

Any councillor contravening this section shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months and the court before which he is convicted may order that he shall vacate

Councillor not to speak or vote where he has pecuniary interest.

his seat and his seat shall thereupon become vacant; provided however that the court shall not make such order if it is proved that such contravention arose from mistake or inadvertence and did not arise from any want of good faith.

14. Notwithstanding anything in this Ordinance contained

Saving as to certain cases.

(a) no councillor shall be prohibited from voting upon or discussing in or before the council or any committee thereof

(1) any scheme for the imposition of special rates; or

(2) the tariff charge for or the regulations and conditions generally applicable to the supply by the council of anything or the rendering by the council of any service whether in the whole municipality or any district thereof;

(b) no councillor shall be required to disclose to the council his interest in any contract entered into with the council for the supply by the council of anything or the rendering by the council of any service at the ordinary published tariff charge for such supply or service;

(c) it shall not be necessary to include any such contract as aforesaid in any statement prepared under sub-section

(4) of section *twelve*.

15. A councillor shall not act as agent or representative of any person

Councillor not to act as agent before court or committee appointed by council.

(a) before any valuation court appointed by the council under the Local Authorities Rating Ordinance 1903 or any amendment thereof; or

(b) before any other court or committee appointed by the council to deal with the rating of property by way of special assessment or otherwise; or

(c) before any committee of the council appointed to consider or deal with applications for any licences which the council has power to grant.

Any councillor contravening this section shall upon conviction vacate his seat and be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

16. Any councillor who is required to vacate his seat under any of the provisions of sections *eleven* to *fifteen* inclusive of this Ordinance shall not be capable for a period of three years thereafter of being elected a councillor for any municipality or of holding a commission as justice of the peace or of sitting on any valuation or licensing court.

Penalty for councillor required to vacate his seat.

17. Section *five* of the Municipalities Elections Ordinance 1903 and section *twenty-six* of the Municipal Corporations Ordinance 1903 shall be and are hereby repealed.

Repeal of certain sections of Ordinance No. 38 of 1903 and Ordinance No. 58 of 1903.

18. The provisions of sections *four five* and *nine* to *sixteen* inclusive shall apply to the council of the municipality of

Certain provisions to apply to Pretoria Municipality.

Pretoria and be in force in such municipality and the provisions of sections *eleven to fourteen* inclusive and of section *sixteen* shall apply *mutatis mutandis* to the Rand Provisional Joint Committee.

Title.

19. This Ordinance may be cited for all purposes as the Municipal Amending Ordinance 1906 and this Ordinance the Municipal Corporations Ordinance 1903 the Municipal Corporations Amendment Ordinance 1904 and the Municipal Amending Ordinance 1905 shall be read as one Ordinance and may be cited together for all purposes as the Municipal Corporations Statutes 1903-1906.

FIRST SCHEDULE.

AGREEMENT MENTIONED IN SECTION SEVEN.

BE IT HEREBY MADE KNOWN TO ALL WHOM IT MAY CONCERN :—

That on this the twenty-sixth day of July in the Year of Our Lord One Thousand Nine Hundred and Six (1906) before me Frans Herman van der Willigen Notary Public by lawful authority duly sworn and admitted and in the presence of the subscribing witnesses personally came and appeared :—

Robert George Fricker and William Sebastian Smits of Johannesburg in their capacity as two of the Directors and George Gwinnett Bompas also of Johannesburg in his capacity as the Secretary of the Simmer and Jack Proprietary Mines Limited the said representatives being duly authorized thereto by a Resolution passed by the Board of Directors of the said Company dated 25th July 1906 copy of which resolution certified as such by the said Secretary was this day exhibited to me the Notary and remains filed in my protocol of the first part.

Robert George Fricker and Douglas Christopherson of Johannesburg in their capacity as two of the Directors and Frederick Leslie Brown of Johannesburg aforesaid in his capacity as the Secretary of the Rand Victoria East Limited the said representatives being duly authorized thereto by a resolution passed by the Board of Directors of the said Company dated 25th July 1906 copy of which resolution certified as such by the said Secretary was this day exhibited to me the Notary and remains filed in my protocol of the second part and Charles Brammer Mayor herein representing the Town Council of the Municipality of Germiston of the third part.

And whereas the first-mentioned Company is the freehold owner of certain proclaimed farm Elandsfontein No. 147 in the Witwatersrand District.

And whereas the second-mentioned Company is the registered owner of certain gold prospecting claims Nos. 1290/4 and portion of 1323/5 situate on the aforesaid proclaimed farm Elandsfontein No. 147.

And whereas the said Companies are willing to grant and the Town Council of the Germiston Municipality is willing to accept certain rights to a piece of ground situate on the farm Elandsfontein No. 147 in the Witwatersrand District and held under mining title by the second-mentioned Company subject to the consent of the Government of the Transvaal Colony being obtained upon certain terms and conditions.

NOW THEREFORE THESE PRESENTS WITNESS :—

The Simmer and Jack Company Limited and the Rand Victoria East Limited hereby grant and the Town Council of the Germiston Municipality accepts the right to use the surface of certain piece of ground in extent 274 125 (Two hundred and seventy-four and one hundred and twenty-five) square feet as shown by a figure coloured red on the diagram hereunto annexed for the purpose of establishing and maintaining a Municipal Compound site on the following terms and conditions :—

1. The grant is to be for a term of thirty years from the date of signing of these Presents.
2. Each of the aforementioned parties contracts and binds himself in so far only as the extent in area of its interest is concerned and as the nature of its interest allows it to do by law and the Council acknowledges that it has

full notice of the nature extent and legal incidents of the titles to the land in question of the various parties and accepts this Agreement on the above basis.

3. In consideration of such grant a sum of One Hundred Pounds (£100 Os. Od.) Sterling per annum is to be paid yearly in advance from date of signing of agreement, to the said Companies at the Office of the Consolidated Gold Fields of South Africa Limited at Johannesburg. Should the rent be unpaid after 30 days notice in writing having been given this Agreement shall be null and void without any recourse to law.

4. The right of mining under the said piece of ground to be so occupied by the said Town Council as had and possessed by the Rand Victoria East Limited under Law No. 15 of 1898 or any other law relating to the mining for precious minerals shall and is hereby reserved to that Company their successors and assigns.

5. No action or proceedings shall be brought or maintained in any Court by the Town Council against the Companies in respect of any inconvenience or damage arising by reason of undermining proximity of tailing heaps or otherwise.

6. The Town Council shall at its own cost and expense make provision for proper drainage and sanitary service by septic tanks or otherwise and shall take proper precautions to prevent any pollution of the Victoria Lake (Simmer and Jack Pan) by drainage making its way from the said piece of ground to the said Victoria Lake.

7. The Town Council shall erect on the said piece of ground such buildings and erections as may be required and occupy the same immediately on completion thereof. It shall further remove the buildings and erections from the present Compound site and leave the ground occupied by them in reasonably clean and tidy condition.

8. At the expiration of the period of this grant or at some termination hereof from any cause the Town Council shall remove all buildings and erections from the said piece of ground within three months from the termination of this Agreement and leave the same in reasonably clean and tidy condition.

9. The Companies hereby promise and undertake to give and grant their written consent to and do or perform any other or further act required for the registration of this Contract against their respective Title Deeds of the ground in the Deeds Registry and the office of the Registrar of Mining Rights or wheresoever else required.

10. The Town Council shall immediately on completion of this Contract apply for the consent of the Government thereto and it is distinctly agreed that should such consent not be obtained this Contract shall not be binding on any of the contracting parties.

11. The Council shall not cede or assign its rights under this Agreement or any part thereof without the consent in writing of the Companies thereto first had and obtained.

12. It is hereby expressly stipulated and agreed that the Rand Victoria East Limited notwithstanding anything in Clause 2 hereof set forth shall in no way be bound or obliged to preserve its title to the piece of ground the subject of this Agreement of whatsoever nature or kind such title may be or hereafter may become after termination of the life of its mine.

13. All Municipal rates sanitary fees and Municipal taxes of every description which are at present or which may be hereafter levied and imposed upon the piece of ground the subject of this Agreement or on any buildings which may hereafter be erected upon the same shall be borne and paid by the Council.

14. It is further stipulated that in the event of the title of this Company to the said piece of ground being in any way jeopardised or imperilled by reason of the existence of the Agreement or by any acts which may be done upon or in respect of the same by the Council or in the event of the Government or any properly qualified official thereof requiring the cancellation of these presents or the discontinuance of the use of the surface for the purposes aforesaid the Company shall have the right forthwith to put an end to and cancel this Agreement and to require the Council to quit and depart from the said piece of ground and to remove all its premises buildings and erections therefrom.

15. No Liquor Licenses of any sort whatsoever and no Trading Licenses shall be allowed to be obtained in respect of the area herein referred to and

no trading or dealing or selling of liquor or goods will be permitted and the Council undertakes to co-operate in all respects with the Company in order to prevent any infringement of this Clause.

16. If any difference or dispute shall arise between the parties to this Agreement as to the true intent and meaning of any of the terms and conditions herein contained or as to any matter or thing arising out of this Agreement such difference or dispute shall immediately on the happening thereof be referred to two arbitrators one of whom shall be appointed by each of the parties hereto and the said arbitrators shall make their award in writing within one (1) month after entering on the reference and such difference or dispute shall otherwise be determined by arbitration in manner provided for by the Arbitration Ordinance 1904.

17. The costs of this Agreement and all expenses incidental thereto as also the Transfer Duty (if any) shall be borne by the said Town Council.

Thus done and executed at Johannesburg aforesaid on the day month and year first aforewritten in the presence of James David Low and Bernie Malraison who together with the Appearers and me the Notary have duly subscribed to the original hereof now remaining in my Protocol.

Quod Attestor.

F. H. v. d. WILLIGEN,

Notary Public.

(Seal.)

SECOND SCHEDULE.

AGREEMENT MENTIONED IN SECTION EIGHT.

BE IT HEREBY MADE KNOWN :

That on this 22nd day of August in the year of Our Lord One thousand Nine hundred and Six before me Petrus Jacobus Malherbe of Boksburg in the Colony of the Transvaal Notary Public by lawful authority duly admitted and sworn and in the presence of the subscribing witnesses personally came and appeared—

William Inchbold Haley and Henry James Lamb two of the Directors of the Klippoortje Estates and Tramway Company Limited being duly authorized thereto by Resolution of the Board of Directors of the said Company dated the 22nd day of August 1906 the party of the first part ; secondly came and appeared—

William Dalrymple and Carl Distel in their capacity as Directors and Murdoch Wright MacLachlan, in his capacity as Secretary of the Hercules Company, Limited, being duly authorized thereto by Resolution of the Board of Directors of the Hercules Company Limited dated 22nd day of August 1906 the party of the second part ; and thirdly came and appeared George Constable of Boksburg in his capacity as Mayor of the Municipality of Boksburg being duly authorized thereto by Resolution of the Municipal Council of the Municipality of Boksburg dated 30th day of July 1906 the party of the third part hereinafter referred to as the Council ; the aforesaid three Resolutions having this day been exhibited to me the Notary and now remain filed in my protocol.

AND THESE APPEARERS DECLARED :

That whereas the said Klippoortje Estates and Tramway Company Limited are the registered owners of the farm Klippoortje No. 149 situated in mining district of Boksburg under and by virtue of Deed of Transfer No. 1899/1903 dated 28th February 1903.

And whereas the said Hercules Company Limited are the registered holders of certain claims Nos. 799 to 806, 819 to 826, 839 to 846, all inclusive situated on the said farm Klippoortje ;

And whereas it has been agreed between the said Klippoortje Estates and Tramway Company Limited the said Hercules Company Limited and the Town Council of Boksburg that subject to the consent and approval of the Government of the Transvaal Colony certain portions of the said farm Klippoortje shall be reserved and set aside as and formed into a Location for Natives and a Reserve or Bazaar for Asiatics under terms and conditions as hereinafter set forth ;

NOW THEREFORE THESE PRESENTS WITNESS :

That the said Klippoortje Estates and Tramway Company Limited and the said Hercules Company Limited declared to grant and convey to the Town Council of Boksburg the right to form locate and establish a Native Location in extent fourteen

acres and an Asiatic Reserve or Bazaar in extent eleven acres on the north-eastern corner of the said farm Klippoortje namely on that portion held by the said Klippoortje Estates and Tramway Company Limited under Deed of Transfer as aforesaid and on which the claims aforesaid or a part thereof belonging to the Hercules Company Limited are situated the said Location and Bazaar being contiguous to one another forming an area not greater than twenty-five (25) acres and subject to particular definition by legal survey and diagrams intended to be hereafter attached thereto which aforesaid rights shall be subject to the following terms and conditions and shall convey and include the following further rights and privileges namely:—

1. The rights aforesaid are granted for a period of twenty-one (21) years reckoned from the 22nd day of August 1906 and are granted without payment of any consideration by any of the parties to this Agreement to any one or other of the parties hereto.

2. The said Native Location and Asiatic Bazaar or either of them shall not be contiguous to Mynpacht No. 394.

3. During the continuance of this Agreement and during the continuance of the said Location and Bazaar on the said property the said Hercules Company Limited bind themselves not to conduct any mining operations on nor to interfere with or disturb the surface of the ground reserved as aforesaid in any way nor to exercise such rights as they may but for this Agreement have as claimholders in respect of the surface of such reserved ground but they shall continue to hold enjoy and exercise the mining rights under the said surface.

The said Klippoortje Estates and Tramway Company Limited bind themselves during the continuance of the said Location and Bazaar not in any way to exercise any of the rights which they may but for this Agreement be entitled to on the said reserved ground but they shall continue to hold enjoy and exercise all the rights and privileges conferred on them by the Gold Law in respect of the mining rights under the said surface.

4. The said reserved ground shall be used solely and exclusively for the purpose of a Native Location and Indian Bazaar as aforesaid and no other and the Town Council shall for that purpose exercise all the powers privileges rights authorities and jurisdictions on the said reserved ground which are conferred on and vested in the said Council or which may at any time hereafter be conferred on or vested in the said Council in every respect as though the said ground belonged to the Council or had been previously specially reserved under the Gold Law or under any other Law of this Colony for the purposes of a Native Location and Indian Bazaar and not in consequence or pursuance of this Agreement.

5. The said Council shall have the right to at any time disestablish the said Native Location and Asiatic Bazaar without giving the said Klippoortje Estates and Tramway Company Limited or the Hercules Company Limited any notice thereof.

6. On the termination of this Agreement or in the event of the said portion of the farm on which the said Location and Bazaar have been established or any portion thereof be deproclaimed at any time then the Council will cause the said Location and Bazaar or such portion thereof as is situated on such deproclaimed ground to be removed and to leave the ground in reasonably clean and tidy condition. Provided however that the Council shall not be bound to cause the said Location and Bazaar to be removed unless requested to do so in writing by the said Klippoortje Estates and Tramway Company Limited and in no case shall the Council be obliged to cause such removal until six months after the date of such notice.

7. No action or proceeding shall be brought or maintained in any Court by the Council against either of the said Companies in respect of any inconvenience or damage arising from undermining for *bona fide* mining purposes or in connection with such *bona fide* mining purposes or from the proximity of tailing heaps.

8. The said Klippoortje Estates and Tramway Company Limited and Hercules Company Limited contract and bind themselves in so far only as the extent of their respective interest in the area is concerned, and as the nature of their respective interest allows them to do by Law, and the Council acknowledges that it has full notice of the nature extent and legal incidents of the titles to the land in question of the various parties and accepts the agreement

on the above basis. It is further agreed that the rights granted in terms of these presents by the said Companies have been so granted in contemplation of certain "Draft Ordinance to further amend the Law relating to Municipal Corporations" becoming Law—in terms of which Ordinance it is provided *inter alia* that these presents shall be deemed to have been lawfully entered into.

9. No Liquor License of any sort whatsoever shall be allowed to be obtained in respect of the area herein referred to and no trading or dealing in or selling of liquor will be permitted, and the Council undertakes to co-operate in all respects with the Companies to prevent any infringement of this clause.

10. If any difference or dispute shall arise between the parties to this Agreement as to the true intent and meaning of any of the terms and conditions herein contained or as to any matter or thing arising out of this Agreement such difference or dispute shall immediately on the happening thereof be referred to arbitration in terms of Arbitration Ordinance of 1904.

11. The costs of this Agreement and all expenses incidental thereto as also the Transfer Duty (if any) shall be borne by the said Town Council.

12. It is specially agreed between the parties that notwithstanding anything to the contrary elsewhere in these presents contained or implied the Municipality shall so divert or cause to be diverted the main road from Elsburg to Boksburg that no portion of the said road will be within one hundred and fifty yards of any portion of the said Location and Bazaar. The Municipality undertakes to effect such diversion within six months after the establishment of such Location or Bazaar.

13. Where mention is made in this Agreement of the Klippoortje Estates and Tramway Company Limited and the Hercules Company Limited it shall include their successors and assigns.

Thus done and passed at Johannesburg on the date aforesaid in the presence of Edward Davies Alexander Smith Alec. George Brook Ernest Maytham Frans Herman van der Willigen and Alexander Anderson as witnesses who together with the Appearers and me the Notary have subscribed the original hereof now remaining in my protocol.

Quod Attestor.

P. J. MALHERBE.

Notary Public.

No. 27 of 1906.]

[Promulgated 28th September, 1906.]

AN ORDINANCE

TO APPLY A SUM OF MONEY FOR THE SERVICE OF THE YEAR
ENDED THE 30TH DAY OF JUNE, 1907.

Assented to 12th September, 1906.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

1. The public revenue of this Colony is hereby charged towards the service of the year ending the 30th day of June 1907 with a sum of thirty-one thousand one hundred and fifty pounds in addition to the sum mentioned in the Appropriation Ordinance (No. 3) 1906.

Public
revenue to be
charged with
£31,150.

2. The money granted by this Ordinance shall be applied to the purposes and services as set forth in the schedule annexed hereto.

How to be
applied.

3. The moneys granted by this Ordinance shall not be issued or applied to any use intent or purpose other than the particular services to which the said amounts have been granted respectively by this Ordinance.

Not to be
applied
otherwise
than as
granted.
The Treasurer
to make
payments
under warrant
of the
Lieutenant-
Governor.

4. The Colonial Treasurer being duly authorized thereto by warrant under the hand of the Lieutenant-Governor shall issue and pay from time to time such sums of money as shall be required for the purposes hereinbefore mentioned not exceeding in the whole the sums respectively in that behalf specified and shall in his accounts be allowed credit for all sums paid by him in pursuance of such warrant; and the receipts of the persons to whom such sums shall have been so paid shall be to him a full discharge for the sum or sums for which the same receipts shall have been respectively given.

5. This Ordinance may be cited as the Appropriation Ordinance (No. 4) 1906.

Title.

SCHEDULE.

No. of Vote.	Title of Vote.	Accounting Officer.	Amount.
ORDINARY EXPENDITURE.			£
XXI	Grants-in-Aid to Local Authorities	Assistant Colonial Secretary, Division II	16,150
SPECIAL EXPENDITURE.			
XLI	Bacteriological Laboratory	Secretary for Public Works	15,000
		Total ..	£31,150

No. 28 of 1906.]

[Promulgated 28th September, 1906.]

AN ORDINANCE

TO AMEND CERTAIN LAWS OF THE COLONY RELATING TO
REVENUE.

Assented to 12th September, 1906.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

Repeal of laws.

1. Law No. 1 of 1885 together with First Volksraad Resolution article *one hundred and twelve* dated the sixteenth day of May 1893 shall be and is hereby repealed; provided always that notwithstanding such repeal and notwithstanding anything in the Revenue Licences Ordinance 1905 contained the persons mentioned in articles *three four five six* and *seven* of Law No. 1 of 1885 shall be exempt from taking out licences as auctioneers under the said Revenue Licences Ordinance 1905 for conducting such sales by public auction as are in the said articles described.

Repeal of section *seven* of Proclamation (Transvaal) No. 12 of 1902 and substitution of new provision therefor.

2. Section *seven* of the Stamp Duties Amendment Proclamation 1902 shall be and is hereby repealed and there shall be substituted therefor the following provision:—

For text, see Proclamation No. 12, 1902, section seven.

Amendment of sections *three* and *four* of Proclamation (Transvaal) No. 34 of 1902.

3. For the purposes of the Profits Tax (Gold Mines) Proclamation 1902 the expression "amounts actually expended" as used in sections *three* and *four* thereof shall be deemed to mean the net amounts expended after taking into account all refunds rebates discounts and like recoupments.

Title and date of taking effect.

4. This Ordinance may be cited for all purposes as the General Revenue Amendment Ordinance 1906 and shall come into operation on the first day of October 1906.

No. 30 of 1906.]

[Promulgated 28th September, 1906.]

*AN ORDINANCE

TO REGULATE THE RETIRING PENSIONS OF THOSE OFFICERS OF THE PUBLIC SERVICE OF THIS COLONY WHO HAVE BEEN TRANSFERRED THERETO FROM OTHER SERVICES WITH PENSIONABLE RIGHTS.

Assented to 23rd September, 1906.

BE IT ENACTED by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows:—

PRELIMINARY.

1. In this Ordinance unless inconsistent with the con-
text;

Interpreta-
tion of terms.

“British possession” shall include all His Majesty’s dominions (other than the United Kingdom and this Colony) and any territory under the protection of the British Crown;

“minister” shall mean in relation to any officer or person claiming a pension the person representing on the Executive Council of this Colony the department in which such officer or person holds or has held a pensionable office;

“pension” includes an annuity and gratuity or either and shall mean a pension payable under the provisions of this Ordinance;

“superannuation pension” shall mean a pension payable to an officer retiring from the public service at the prescribed age applicable to such officer;

“invalid pension” shall mean a pension payable to an officer on retirement under the prescribed age applicable to such officer owing to mental or bodily infirmity;

“compensation pension” shall mean the pension payable in the circumstances described in section *five*;

“extraordinary pension” shall mean a pension payable to an officer who has become unfitted for the public service by reason of an injury received in the discharge of duty involving special risk and as a result of such risk;

“pensionable officer” shall mean any officer in the public service who has prior to the coming into operation of this Ordinance been transferred to the public service from the civil or consular service of the United Kingdom or of a British possession with pensionable rights;

* See Act No. 19 of 1908 and Act No. 19 of 1909.

- “ service ” shall mean for purposes of calculating a pension the aggregate time spent by a pensionable officer in the public service and in the civil or consular service from which he was transferred (including the time spent in transit from one such service to the other);
- (i) on actual duty;
 - (ii) on authorized leave of absence otherwise than without pay;
 - (iii) under suspension followed by reinstatement in the same or another office;
 - (iv) in temporary retirement on half-pay for a period not exceeding two years;
 - (v) in transit from one appointment in the public service to another such appointment when such officer has been transferred under competent authority;
- “ prescribed age ” shall mean any age prescribed under section *three* for retirement from the public service;
- “ public service ” shall mean service in a department of the Government of this Colony;
- “ regulations ” shall mean regulations made under section *eighteen*;
- “ retirement ” shall mean the retirement of a pensionable officer from the public service;
- “ revenue ” shall mean the general revenue of this Colony;
- “ salary ” shall mean;
- (i) an officer’s annual pay and any special (but not local) allowance attached to particular offices;
 - (ii) any personal allowance granted him in consideration of his pay being reduced otherwise than as a penalty;
 - (iii) any extra allowance he may draw while acting in an office whether temporarily or permanently vacant;
 - (iv) ration allowances or the value of free rations;
 - (v) the estimated value of free quarters; but shall not include
 - (a) any local allowance for the cost of living or a marriage allowance;
 - (b) any transport or subsistence allowance;
 - (c) fees honoraria or bonuses of any kind;
 - (d) overtime payments;
 - (e) any other allowance not herein specified;
- “ average salary ” shall mean the average of the salary of an officer during the three years immediately preceding his retirement (or immediately preceding his death in the case mentioned in section *seven*).

GENERAL PROVISIONS.

2. To every pensionable officer there shall be paid on retirement under the circumstances severally described in section *one* and respectively applicable;

- (1) a superannuation pension; or
- (2) an invalid pension; or
- (3) an extraordinary pension;

on the same scale as would have been paid to him in such several circumstances if such officer had remained in the civil or consular service from which he was transferred but had been drawing on retirement therefrom a salary equal in amount to the salary actually drawn by him on retirement from the public service of this Colony; provided always that;

- (i) no service rendered by such officer in such civil or consular service aforesaid while under the age of seventeen years shall be calculable for a pension;
- (ii) the pension payable to such officer shall be calculated upon his actual service and there shall not be counted any special local additions which would have been calculable for pension in the civil or consular service from which he was transferred; except any local addition to which any such officer may have actually acquired a right prior to his transfer to the public service;
- (iii) every pensionable officer who according to any law or regulation applicable to the civil or consular service from which he was transferred was required to contribute towards his pension therein shall contribute at the same rate as he was so required as from the date of his transfer to the public service and all such contributions outstanding at the coming into operation of this Ordinance in respect of the period between the date of such transfer and the date of the coming into operation of this Ordinance shall be paid to the Colonial Treasurer on such terms as the Lieutenant-Governor may allow;
- (iv) all such contributions towards pension subject to any such terms aforesaid shall be made by monthly deductions from the salaries of officers liable under this section to contribute towards their pensions.

3. (1) The prescribed age for retirement shall be fifty-five and any pensionable officer may subject to his compliance with any regulations as to notice of retirement retire at such age save that in the case of officers described in sub-section (3) of this section and fulfilling the conditions thereof the prescribed age for retirement shall be fifty.

(2) The minister may require the retirement of a pensionable officer at the prescribed age applicable to such officer and shall require such retirement at the age of sixty unless it is desirable in the public interest to retain such officer in the public service over such last-mentioned age in which case the Lieutenant-Governor may from time to time retain him for any further period not exceeding one year up to the age of sixty-five after which age no pensionable officer shall remain in the public service; ~~provided always that a return of officers~~

Pensions which may be paid to pensionable officers under this Ordinance.

Prescribed age of retirement.

~~so retained after the age of sixty shall be laid before the Legislature annually within fourteen days of the opening of its ordinary session.~~

(3) When a pensionable officer has been in service in a lunatic or leper asylum as medical officer nurse or attendant or in the Prisons Department as a subordinate officer for a period of ten years and a superannuation pension is granted to him on retirement there may be added to his service a period not exceeding five years; provided that the pension awarded to him shall in no case exceed the maximum pension to which he may be entitled under this Ordinance.

Conditions of grant of invalid and extraordinary pension.

4. No invalid or extraordinary pension shall be paid unless the applicant therefor is reported by the medical board in accordance with regulations to be unfit for further service by reason of mental or bodily infirmity which is likely to be permanent and is due to no excess or misconduct on the part of the applicant; provided always that if it be doubtful whether such infirmity is likely to be permanent an invalid pension for a period not exceeding two years may be paid to him provisionally and subject to a condition that on the expiry of such period he shall again be medically examined in accordance with regulations.

Compensation pension scale of and conditions under which granted.

5. (1) Whenever a pensionable officer being under the prescribed age applicable to such officer is discharged from the public service owing to the abolition of his own or another office or owing to a reduction of the number of pensionable officers or a reorganization in his department there shall be paid to him a compensation pension that is to say;

(a) a pension on the same scale as is payable to a pensionable officer in the case of superannuation;

(b) together with a gratuity of one month's average salary for each year of service but not exceeding one year's average salary.

(2) No compensation pension shall be paid unless the Colonial Treasurer is satisfied that it is impossible to transfer the applicant therefor without degrading him in the public service to another office by removing therefrom a probationary or temporary officer or in some other manner; and the applicant for a compensation pension shall not be deemed to be degraded if being in a graded service he is retained in the same grade without reduction of salary; or if not being in a graded service he can be appointed to an office carrying not less than four-fifths of the salary drawn in his former office and the difference is made good to him by a personal allowance.

Compulsory retirement on incapacity.

6. Whenever a pensionable officer who is under the prescribed age applicable to such officer and is not qualified for an invalid pension becomes in the opinion of the minister or of the Lieutenant-Governor unfitted to efficiently discharge the duties of his office the minister may direct that an enquiry shall be held upon definite charges formulated against such officer and at such enquiry an opportunity shall be given to him to meet any such charges.

In the event of its being found on such enquiry that he is unfitted to efficiently perform the duties of his office the Lieutenant-Governor may discharge him from the public service; provided always that where such unfitness is not attributable to misconduct or gross negligence of the officer nor to any other cause for which the officer has been himself responsible the Lieutenant-Governor may on consideration of all the circumstances grant to him an invalid pension.

7. If a pensionable officer die whilst in the public service or within one year of the date of the grant of a superannuation pension the Lieutenant-Governor may in his discretion pay to or for the benefit of the widow or minor children of such officer or failing a widow and minor children to any children or relatives dependent on such officer for maintenance a gratuity not exceeding one year's average salary; and if there be several claimants to the benefit of such gratuity the distribution thereof among such claimants shall be made as the Lieutenant-Governor may determine.

Gratuities to widow of pensionable officers dying while in the service.

8. No pension shall be paid;

(a) to any person dismissed from the public service for misconduct; or

(b) to any person who voluntarily retires from the public service before the prescribed age applicable to such officer.

Persons to whom pensions may not be granted.

9. All pensions shall be paid out of revenue and the contributions (if any) towards pensions and any arrears of contributions shall be paid into revenue.

Pensions to be paid out of revenue and contributions (if any) to be paid into revenue.

10. It shall be the duty of the Colonial Treasurer to take all steps (in accordance with regulations) necessary for the recovery from the Imperial Government or from the Government of a British possession of any sums to be contributed by any such Government towards pensions and to pay such sums when recovered into revenue.

Colonial Treasurer to recover contributions to pensions by other Governments and pay them into revenue.

MISCELLANEOUS.

11. If any person becoming entitled to or actually in receipt of a pension be found after enquiry to have been guilty of an act or omission which would if such act or omission had been discovered prior to his so becoming entitled have rendered him liable to dismissal or if any person be found to have wilfully made a false statement for the purpose of obtaining a pension knowing the same to be false or if a person in receipt of a pension fails to comply with any reasonable request made by the minister to afford all assistance and information in his power relating to any office formerly held by him then the Lieutenant-Governor may order that the right to any pension to which such person has become entitled or of which he is in receipt shall be suspended or forfeited.

Suspension or forfeiture of pension in certain cases on order of Lieutenant-Governor.

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Power to reduce pensions where officer has not rendered satisfactory service.

12. Whenever the Lieutenant-Governor is satisfied after enquiry that a pensionable officer has not rendered satisfactory service he may order that a pension less than is ordinarily payable in accordance with this Ordinance be paid to such officer; provided always that such officer shall not receive owing to the exercise of the powers of this section in the case of an annuity less than the actuarial value of any sum contributed by him or in the case of a gratuity less than any actual sum contributed by him in accordance with the provisions of this Ordinance.

Power to recall pensioned officer to service within two years of retirement in certain events.

13. Whenever an officer has retired from the public service on an invalid or extraordinary pension the Lieutenant-Governor may within two years of his retirement if such officer be certified in accordance with regulations to be physically fit for the public service and be under the prescribed age applicable to such officer require him to again take up office; provided always

- (a) that the salary offered to such officer be not less than the salary drawn by him immediately prior to his retirement;
- (b) that the office which he is required to take up be not in a lower grade than that from which he previously retired on pension;
- (c) that any annuity which he was drawing at the time of his so taking up office again shall determine;
- (d) that on his final retirement such officer shall be entitled for the purposes of pension to add together the service rendered by him prior to and subsequent to his first retirement.

Commutation of small pensions.

14. If an annuity not exceeding twenty-five pounds is granted under this Ordinance the Lieutenant-Governor may at the request of the recipient and before the first payment thereof has been made commute such annuity by a single cash payment calculated according to the period for which the recipient may be expected to draw the annuity but so that such cash payment does not exceed five times the amount of the annuity.

Pensions not to be assigned or executable.

15. No pension shall be assignable or transferable or be capable of being hypothecated nor shall it be liable to be attached or subjected to any other form of execution under a judgment or order of any court of law.

Pensions to cease on conviction.

16. If any person in receipt of a pension is convicted before any court in His Majesty's Dominions of any crime or offence and is sentenced therefor to death or to any term of imprisonment with hard labour exceeding twelve months and shall not within two months thereafter receive His Majesty's free pardon such pension shall forthwith determine; provided always that the Lieutenant-Governor may if he think fit order that such pension shall revive if such person shall at any time after such conviction or sentence aforesaid receive His Majesty's free pardon; provided further that the Lieutenant-Governor may if he think fit authorize the payment to or for the benefit of such person's wife or minor children or failing a wife and minor children to any children or relatives dependent on him of such portion of the pension as may be considered necessary for her or their maintenance.

17. (1) If any person in receipt of a pension becomes an insolvent such pension shall forthwith determine; provided always that in any such case the Lieutenant-Governor may order that all or any part of the annuity payable to such insolvent under this Ordinance be paid to or for the benefit of all or any of the following persons: namely to or for the benefit of such insolvent his wife or any minor children or failing a wife and minor children to any children or relatives dependent on him for maintenance.

Pensions to cease on insolvency but may be restored on rehabilitation.

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(2) Whenever a pension has determined under this section the Lieutenant-Governor may order that such pension shall revive on rehabilitation of the insolvent and that he shall receive an annuity at the same rate and under the same conditions as before insolvency.

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18. The Lieutenant-Governor may make alter and rescind regulations for all or any of the following purposes;

Power to Lieutenant-Governor to make regulations.

- (a) prescribing the methods of calculating the proportions of pensions to be recovered from the Government of the United Kingdom or of a British possession;
- (b) prescribing the forms and periods of notice to be given by pensionable officers before their retirement at the prescribed age applicable to such officers;
- (c) for the establishment of a medical board to examine and report upon applications for invalid or extraordinary pensions or upon any other matter that may be referred to it by the Lieutenant-Governor and for prescribing the conditions and form of any medical certificates to be tendered with such applications and the procedure to be followed in the furnishing of such certificates.

19. This Ordinance may be cited for all purposes as the Pensions Ordinance 1906 and shall come into operation on a date to be hereafter fixed by Proclamation of the Lieutenant-Governor in the *Gazette*.*

Title and date of taking effect.

* This Ordinance put in force on 5th January, 1907, by Proc. (Admn.) No. 2 of 1907.

Now 9 of 1912 section 9
 No. 1 (Private) of 1906.]

to 75
 [Promulgated 17th August, 1906.]

*AN ORDINANCE

TO CONFER FURTHER POWERS ON THE COUNCIL OF THE
 MUNICIPALITY OF PRETORIA.

Assented to 9th August, 1906.

WHEREAS it is desirable to amend the Pretoria Municipality Extended Powers Ordinance 1904 and to make further provision with regard to the borrowing powers of the council of the municipality of Pretoria ;

And whereas it is desirable to authorise the said council to raise by the issue of stock a sum of money not exceeding one million pounds sterling for the purposes of the municipality as hereinafter set forth ;

And whereas it is desirable to amend the Pretoria Municipal Proclamation 1902 in certain respects ;

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

Title.

1. This Ordinance may be cited as the Pretoria Municipal Ordinance 1906 and shall be read as one with the Pretoria Municipal Proclamation 1902 the Pretoria Municipal Proclamation Amendment Ordinance 1902 and the Pretoria Municipality Extended Powers Ordinance 1904 and this Ordinance and the said Proclamation and Ordinances may be cited together as the Pretoria Municipal Statutes 1902 to 1906.

Definitions.

2. In this Ordinance unless the context otherwise requires—
 “ the municipality ” means the municipality of Pretoria as constituted for the time being ;
 “ the council ” means the council for the municipality as by law established.

Amendment
 of section *one*
 of Pretoria
 Municipality
 Extended
 Powers Ordinance
 1904.

3. Notwithstanding anything contained in section *one* of the Pretoria Municipality Extended Powers Ordinance 1904 section *sixty-five* of the Municipal Corporations Ordinance 1903 shall from the date of the passing of this Ordinance cease to apply to the council ; provided however that nothing in this Ordinance contained shall affect anything duly done or any liability duly incurred by the council under the provisions of the said section *sixty-five* and any agreement duly entered into and any stock certificate duly issued by the council under the said provisions shall remain of full force and effect.

* See Act No. 32 of 1907, Act No. 12 of 1910.

4. The council is hereby empowered to raise moneys by the issue of stock and otherwise for the purposes of the municipality subject to the provisions *mutatis mutandis* of the Johannesburg Municipality Borrowing Powers Ordinance 1903 (in this Ordinance referred to as "the said Ordinance") and all the provisions of the said Ordinance not including the provisions of any Ordinance by which the said Ordinance has been amended shall apply to the council as if they were herein re-enacted in such terms and with such modifications as are necessary to make them applicable to the council ; provided that for the purposes of this Ordinance :

(a) sub-section (13) of section *fifty-one* of the said Ordinance shall be deemed to be amended by the substitution for the words "one hundred thousand pounds" of the words "*three hundred thousand pounds*"* ;

(b) sub-section (1) of section *fifty-two* of the said Ordinance shall be deemed to be amended by the substitution for the words "ten thousand pounds" of the words "fifty thousand pounds" and by the deletion therefrom of the words "or extend" to the end of the said sub-section and the substitution for such words of the words "or except with the sanction of the Lieutenant-Governor extend for a period of more than six months."

5. The council is hereby authorised to raise by the issue of stock subject to the provisions of the preceding section the amount of one million pounds sterling for the purposes set forth in the Schedule to this Ordinance and the stock issued in pursuance of this authority shall be redeemable within a period of thirty years from the issue thereof. The authority hereby conferred shall be deemed to be an authority conferred by the Lieutenant-Governor in accordance with the provisions of section *three* of the said Ordinance and no further authority for the raising of the said amount shall be required under the said section.

6. The council shall apply the amount raised in pursuance of the authority conferred by section *five* of this Ordinance in accordance with the said Schedule for the purposes therein described in such order and at such times as the council may determine ; provided that the council may out of the proceeds of any stock issued in pursuance of such authority pay the brokerage commission allowance or other costs and expenses of and incident to the issue of such stock and may subject to the approval of the Lieutenant-Governor vary the distribution of the amounts specified in the Second Part of the said Schedule between the different purposes therein described and may further subject to the like approval apply any portion of the amounts specified in the Second Part of the said Schedule not exceeding a total amount of thirty thousand pounds for purposes other than the purposes therein described.

7. In respect of such proportion of the stock issued in pursuance of the authority conferred by section *five* of this Ordinance as is issued for raising money for the purposes specified in section (A) of the Second Part of the said Schedule or such substituted purposes as the Lieutenant-Governor may approve the council shall not be required to make any payments to the redemption fund

Power to raise moneys subject to the provisions *mutatis mutandis* of the Johannesburg Municipality Borrowing Powers Ordinance 1903.

Authority to raise one million pounds for purposes specified in Schedule.

Application of amount raised in pursuance of preceding section.

Special provision as to payments for redemption of certain proportion of stock issued.

* Words in italics have been substituted by Act No. 32 of 1907, sec. 1.

under the provisions of sub-section (2) of section *thirty-six* of the said Ordinance until after the expiration of two years from the date of issue of such stock and the equal annual payments referred to in the said sub-section shall in respect of such stock be reckoned as commencing from the date of the expiration of the said two years in the same manner as if such date were the date of issue and the period fixed for the redemption of such stock were a period of twenty-eight years commencing from such date.

Regulation as to provision for depreciation.

8. It shall be the duty of the council to frame regulations providing for the annual setting aside by the council of adequate amounts to meet the depreciation of all works and plant on which any sums raised under the authority conferred by section *five* of this Ordinance are expended (including any works and plant in respect of the purchase or construction of which the liabilities specified in Part I. of the Schedule to this Ordinance have been incurred) and to submit such regulations for the approval of the Lieutenant-Governor who may approve the same with or without modification and such regulations when approved shall be published in the *Gazette*; provided however that if the council shall fail to frame such regulations and to submit the same for the approval of the Lieutenant-Governor within a period of twelve months from the date of the passing of this Ordinance such regulations may be made by the Lieutenant-Governor.

The council shall set aside annually out of its revenue such amounts for depreciation as are required under regulations made under this section.

Duty of auditors appointed under section *seventeen* of the Pretoria Municipal Proclamation 1902.

9. It shall be the duty of the auditor or auditors appointed under section *seventeen* of the Pretoria Municipal Proclamation 1902 in addition to the ordinary duties of auditors to certify not less than once in each year whether or not;

- (a) the accounts of the municipality are in order;
- (b) separate accounts of all trading undertakings have been kept;
- (c) the accounts issued present a true and correct view of the financial position of the municipality and of its transactions and of the results of trading (if any);
- (d) due provision has been made for the redemption and repayment of any moneys borrowed by the council whether in the form of municipal stock or bills or otherwise;
- (e) the value of the assets of the municipality has been fairly stated;
- (f) the amounts set aside for depreciation and obsolescence of plant are adequate;
- (g) all his or their requirements and recommendations as auditors have been complied with and carried out.

Financial year.

10. The council's financial year shall be the twelve months ending the 30th day of June and the accounts of the revenue and expenditure of the council shall be made up for that year; provided however that this section shall not take effect until the First day of July, 1908.

Amendment of section *nineteen* of Pretoria Municipal Proclamation 1902.

11. Section *nineteen* of the Pretoria Municipal Proclamation 1902 shall be and is hereby amended by adding at the end thereof the following sub-section; (that is to say)

(36) *For text, see Proclamation 7, 1902, section nineteen (36).*

12. Section *twenty-seven* of the Pretoria Municipal Proclamation 1902 as amended by section *two* of the Pretoria Municipal Proclamation Amendment Ordinance 1902 shall be and is hereby further amended by adding at the end thereof the following subsection (that is to say)

(7) *For text, see Proclamation 7, 1902, section twenty-seven (7).*

13. The council shall have the power notwithstanding anything to the contrary contained in the Pretoria Municipal Proclamation 1902 to close or divert any street road or thoroughfare vested in the council under the said Proclamation provided that the council shall in the exercise of its power to close or divert any street road or thoroughfare be subject to the same conditions and restraints as the council of a municipality which has come under the operation of the Municipal Corporations Ordinance 1903 is subject to under section *thirty-five* of the last-mentioned Ordinance in the exercise of the power conferred by the said section.

14. Nothing in this Ordinance contained shall in any way affect the rights of His Majesty the King His Heirs and Successors or of any person except such as are mentioned in this Ordinance and those claiming by from and under them.

15. It shall be lawful for the council to defray out of its revenues any costs incurred in the promotion and passing of this Ordinance.

Amendment of section *twenty-seven* of Pretoria Municipal Proclamation 1902.

Power vested in council to close or divert any street road or thoroughfare.

Rights of the Crown.

Costs of Ordinance.

SCHEDULE.

PART I.

DISCHARGE OF EXISTING LIABILITIES AND REPLACEMENT OF CAPITAL EXPENDITURE INCURRED OUT OF REVENUE.

	£	s.	d.	£	s.	d.
Liabilities to Government	196,666	6	8			
5 per cent, Pretoria Municipal Stock issued for the purchase of Electric Lighting Company	115,000	0	0			
Loan contracted for extension of Electric Lighting System	20,000	0	0			
Further extension	15,000	0	0			
Costs of Municipal Buildings	30,000	0	0			
				376,666	6	8

PART II.

EXPENDITURE ON MUNICIPAL WORKS AND PLANT.

Section A.

	£	s.	d.
Extension of Water Supply	125,000	0	0
Sewerage Scheme	175,000	0	0
Extension and Improvement of Tramway System or the provision by the Council of Motor Omnibuses or other Vehicles for Public use	75,000	0	0

Section B.

Surface Drainage Scheme	175,000	0	0
Erection of refuse destructor, construction of bridges, improvement of roads, and purchase of plant for the purpose of Municipal works	73,333	13	4

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 £1,000,000 0 0

A.D. 1906.]

Johannesburg Municipal Ord. (Pr.) No. II.
By NW a of 1912
subsec 2 of sect 181, 75, 76 & 77
secs 47, 52, 53, 54, 48, 92 & 96

No. II (Private) of 1906.] [Promulgated 28th September, 1906,
and republished as amended in
Gazette, 5th October, 1906.

***AN ORDINANCE**

**TO CONSOLIDATE AND AMEND CERTAIN LAWS RELATING TO THE
MUNICIPALITY OF JOHANNESBURG.**

Assented to 12th September, 1906.

WHEREAS it is expedient to consolidate add to and amend certain laws relating to the council for the municipality of Johannesburg and to confer further powers on the said council :

Be it enacted by the Lieutenant-Governor of the Transvaal with the advice and consent of the Legislative Council thereof as follows :—

CHAPTER I.

PRELIMINARY.

Repeal of laws.

1. The laws mentioned in the First Schedule to this Ordinance shall be and are hereby repealed to the extent set forth in the second column of such Schedule.

Area of municipality.

2. (1) The municipality of Johannesburg shall include the area contained within the boundaries set forth in the Schedule to Proclamation No. 46 (Administration) of 1903 and in addition thereto the portion of the farm Klipspruit No. 58 which is shown on a diagram signed by John William Quinn, Mayor of Johannesburg, dated the Thirty-first of July 1906 and deposited at the office of the Surveyor-General being the portion of the said farm which is vested in the council of the said municipality in freehold ; provided however that the said portion of the said farm shall be exempted from the provisions of the Local Authorities Rating Ordinance 1903.

(2) It shall be lawful for the Lieutenant-Governor from time to time to alter the boundaries of the municipality of Johannesburg.

Corporate name of council of municipality.

3. The council of the municipality of Johannesburg as constituted and elected at the date of the passing of this Ordinance and as hereafter constituted and elected for the time being under the Municipalities Elections Ordinance 1903 and the laws amending the same shall under the name of "The Municipal Council of Johannesburg" be a body corporate with perpetual succession and a common seal with power to alter and change the same from time to time and shall by the said name be capable in law of suing and being sued of purchasing holding and alienating land and generally of doing and performing such acts and things as bodies corporate may by law do and perform subject to the provisions of this

* See Act No. 6 of 1910.

Ordinance and any other law present or future affecting the said municipality ; provided always that the council of the said municipality shall under the said name

(a) remain subject and liable to every contract engagement debt and demand to which it is subject or liable at the date of the passing of this Ordinance ;

(b) continue to be vested with and entitled to all rates fixed property assets and claims with which it or the municipality of Johannesburg was vested or to which it or the said municipality was entitled at the said date ; and

(c) retain all privileges powers jurisdiction and duties conferred or imposed on it by any law or bye-law in force on the said date and not repealed by this Ordinance.

4. In this Ordinance unless the context otherwise requires :— Definitions.

“the municipality” means the municipality of Johannesburg as constituted for the time being ;

“the council” means the municipal council of Johannesburg ;

“owner” includes any person receiving the rent or profits of any land or premises from any tenant or occupier thereof or who would receive such rents or profits if such land or premises were let whether on his own account or as agent for any person entitled thereto or interested therein ;

“occupier” includes any person in actual occupation of land or premises without regard to the title under which he occupies and in case of premises sub-divided and let to lodgers or various tenants the person receiving the rent payable by the lodgers or tenants whether on his own account or as agent for any person entitled thereto or interested therein ;

“native” includes any person belonging to any of the aboriginal races or tribes of Africa south of the Equator and any person one of whose parents belongs to any such race or tribe as aforesaid ;

“town clerk” “town treasurer” and “medical officer of health” mean the persons for the time being acting in the capacities of town clerk town treasurer and medical officer of health for the municipality respectively.

CHAPTER II.

MEETINGS AND PROCEEDINGS OF THE COUNCIL.

5. There shall be not less than twelve ordinary meetings of the council in each year and such meetings shall take place at such times as the council may determine. Ordinary meetings.

6. The mayor or any three councillors may at any time call a special meeting of the council by causing a notice thereof to be served in accordance with the terms of the next succeeding section ; provided that the notice of any special meeting shall specify the object of such meeting. Special meetings.

Notices of meetings.

7. Notice of the time and place of every meeting of the council shall be served on every member of the council either personally or by leaving the same at his usual place of abode or business address twenty-four hours at least before such meeting. Such notice shall be signed by the mayor or by the town clerk; provided that in the case of a special meeting called by three councillors under the provisions of the preceding section such notice may be signed by the three councillors at whose instance the meeting is called. The accidental omission to serve on any councillor such notice as is referred to in this section shall not affect the validity of any meeting.

Meetings open to the public.

8. Every meeting of the council shall be open to the public and the press; provided that this section shall not apply to any committee of the council or to a committee of the whole council.

Quorum.

9. Save where it is otherwise specially provided all acts matters or things authorised or required to be done by the council and all questions that may come before it shall be done and decided by the majority of the councillors who shall be present at any meeting at which not less than one-half or such larger proportion as the council may from time to time fix of the members of the council shall attend.

Casting vote of chairman.

10. In case of equality of votes the chairman of the meeting shall have a second or casting vote.

Adjournment of meetings.

11. The councillors present at any meeting may from time to time adjourn such meeting and if at any meeting of the council a sufficient number of members be not present to exercise the powers vested in the council the member or members present shall adjourn the meeting and if there be no member present then the town clerk shall adjourn the meeting.

Committees.

12. (1) It shall be lawful for the council to appoint out of their own body such and so many committees either of a general or special nature and consisting of such number of members as to the council may seem fit for any purpose which in the judgment of the council would be better managed by means of a committee and to delegate with or without restrictions or conditions as they may think fit any of their powers or duties except any power of raising money by rate or loan to any such committee and to fix the quorum of any such committee.

(2) Every committee shall report their proceedings to the council but to the extent to which the council so direct the acts and proceedings of the committee shall not require the approval of the council.

(3) Every committee shall elect their own chairman and the mayor shall be *ex officio* a member of all committees.

Finance committee.

13. The council shall from time to time appoint a finance committee for regulating and controlling the finance of the council: and an order for the payment of a sum out of the funds of the council shall not be made by the town treasurer except in pursuance of a resolution of the council passed on the recommendation of the finance committee and any cost debt or liability exceeding fifty pounds shall not be incurred except upon a resolution of the council passed on an estimate submitted by the finance committee.

14. Every committee appointed by the council may meet from time to time and may adjourn from place to place as they may think proper and no business shall be transacted at any meeting of the committee unless the quorum of members (if any) fixed by the council and if no quorum be fixed two members be present and at all meetings of the committee if the chairman be not present one of the members present shall be appointed chairman and all questions shall be determined by a majority of the votes of the members present and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of the committee.

Meetings of committees.

15. The minutes of the proceedings of every meeting of the council and of every committee thereof shall be regularly entered in books kept for that purpose and shall be confirmed at the same or some subsequent meeting. Every such minute so entered when signed by a member of the council describing himself as or appearing to be chairman of the meeting at which the minute is confirmed shall in the absence of proof or error therein be considered a correct record.

Minutes.

16. Until the contrary is proved every meeting in respect of the proceedings whereof a minute has been so entered and signed shall be deemed to have been duly convened and held and all the members at the meeting shall be deemed to have been duly qualified and where the proceedings are proceedings of a committee the committee shall be deemed to have been duly constituted and to have had power to deal with the matter referred to in the minutes.

Meetings to be deemed duly held.

17. (1) The minutes of proceedings of the council shall at all reasonable times be open to the inspection of any inhabitant of Johannesburg who may make a copy thereof or take an extract therefrom on payment of such fee as may be prescribed by regulation.

Inspection and copies of minutes and accounts.

(2) The treasurer's accounts shall be open to the inspection of any member of the council who may make a copy thereof or take an extract therefrom.

(3) The abstract of the treasurer's accounts shall be open to the inspection of all inhabitants of Johannesburg and copies thereof shall be delivered to any inhabitant on payment of such fee as may be prescribed by regulation.

CHAPTER III.

POWERS AND DUTIES OF THE COUNCIL.

18. (1) The council shall from time to time appoint a town clerk town treasurer medical officer of health and town engineer for the municipality and such other officials as it may consider necessary and pay such salaries and allowances to such officials as it may determine and unless it be stipulated otherwise in the contract with or in the appointment of an employee the council may at any time remove such employee upon notice of not less than one month or in case of misconduct immediately without notice.

Appointment of town clerk and other officials.

(2) Notwithstanding anything in this section contained the person who is medical officer of health at the date of the passing of this Ordinance shall not be removed from office by the council nor shall the terms of his appointment be varied to his prejudice without the consent of the Lieutenant-Governor which consent shall not be given so long as the said officer shall act and conduct himself with reasonable efficiency and discretion.

Power to enter into contracts.

19. The council may enter into contracts for the purposes of this Ordinance and all such contracts lawfully made shall be effectual and binding on the council and all the other parties thereto their successors heirs executors or administrators as the case may be. Every contract shall be deemed to be duly executed by or on behalf of the council if signed by the mayor or if signed by any one or more councillors thereto authorised by resolution of the council; provided that the council may authorise any of its officers to sign contracts on behalf of the council involving a liability of not more than five hundred pounds sterling.

Contracts worth £50 or upwards to be put up to open tender.

20. Except in cases of emergency before any contract for the execution of any work or the furnishing of any goods to the amount of fifty pounds or upwards is entered into by the council fourteen days' clear notice at the least shall be given in some newspaper circulating in the municipality expressing the purpose of such contract and inviting any person willing to undertake the same to make proposals for that purpose to the council. The council shall accept the proposal which on a view of all the circumstances appears to the council to be most advantageous; and may take security for the due and faithful performance of every such contract or the council may decline to accept any such proposal.

Streets roads squares and open spaces to vest in council.

21. All streets roads thoroughfares footpavements footpaths sidewalks squares and open spaces which have been or shall be at any time set apart and appropriated by proper authority for the use of the public or to which the inhabitants of the municipality shall at any time have or acquire a common right shall be vested in and be under the management and control of the council.

Power to close streets or roads.

22. The council shall have the power anything to the contrary in this Ordinance notwithstanding at all times and upon such notice as it shall deem fit to close any street road or thoroughfare for any particular class of traffic or for all traffic either temporarily or permanently and to divert any street road or thoroughfare either temporarily or permanently: provided however that the council shall in the exercise of its powers to close permanently for all traffic any street road or thoroughfare or to divert permanently any street road or thoroughfare be subject save in the cases hereinafter mentioned to the following conditions and restraints that is to say:—

(1) Before the council shall sanction any such closing or diversion not less than fourteen days' notice shall be given at a council meeting of the intention to move therefor.

(2) Before any such closing or diversion is carried out the council shall prepare a plan showing the nature thereof and shall give notice of the proposed work not less than one month before its commencement in the *Gazette* and in one or more newspapers circulating in the municipality as well as by a

sufficient number of conspicuous placards posted on or near the street road or thoroughfare which it is proposed to close or divert setting forth a place where the said plan shall be open for inspection at all reasonable hours and shall also serve a copy of such notice on the owners or reputed owners lessees or reputed lessees and occupiers of all property abutting upon the said street road or thoroughfare whose addresses can after reasonable enquiry be ascertained.

(3) Where notice in writing of any claim for compensation is served on the council within the period of one month abovementioned by any such owner lessee or occupier or any other person aggrieved by such closing or diversion the council shall make compensation to such person for any damage occasioned to him thereby and such compensation shall in default of agreement be fixed by arbitration; provided that in assessing the amount of compensation payable to any person hereunder the benefit or advantage derived or to be derived by such person by reason of such closing or diversion shall be taken into account.

(4) If any person interested as owner lessee or occupier in any property abutting on the street road or thoroughfare which it is proposed to close or divert shall at any time within the period of one month abovementioned serve written notice on the council of any objection to such closing or diversion then unless such objection shall be withdrawn such closing or diversion shall not be carried out without the sanction of the Lieutenant-Governor.

* (5) After the serving of any such objection the Lieutenant-Governor may on the application of the council appoint an officer to make an enquiry into the proposed closing or diversion and the objection thereto and to report thereon; and on receiving the report of such officer the Lieutenant-Governor may make an order disallowing the proposed closing or diversion or allowing it with such modification (if any) as he may deem necessary.

Such conditions and restraints shall not apply

- (a) in the case of any closing or diversion of a street road or thoroughfare which is effected for the purpose of or in connection with the substitution of a subway under a railway for a level crossing over a railway;
- (b) in the case of any closing or diversion of a street road or thoroughfare which is authorised under the provisions of the Local Authorities Roads Ordinance 1904.

23. The council shall have power with the consent of the Lieutenant-Governor to erect and maintain on any square or other open public place buildings for public purposes or to set apart any such open public place or portion thereof for any such buildings.

Power to erect public buildings on squares.

24. The council shall have power and authority to do any of the following things:—

Powers of the council.

- (1) To make construct alter keep clean and in repair the roads streets dams furrows sewers drains culverts and bridges within the municipality.

* For closing of certain streets, Auckland Park Township, see Govt. Notice No. 1076 of 1907 (*Gazette*, 4/10/07).

(2) To excavate construct and lay down within the limits of the municipality water-courses water-pipes conduits sluices dams reservoirs aqueducts wells and other works for supplying the inhabitants of the municipality with water and to keep the same in repair or to grant leave to any person or company or persons to lay down pipes or to execute any other like works.

(3) To acquire by lease purchase or otherwise any land or buildings and to erect maintain and keep in repair any buildings for any municipal requirement or purpose.

(4) To establish and maintain cemeteries and mortuaries and to make such charges in connection therewith as may be fixed by bye-laws.

(5) To establish erect maintain and carry on markets and market buildings and public weighing machines and to make charges in connection therewith.

(6) To establish maintain and carry on pounds and to make charges in connection therewith.

(7) To establish erect maintain and carry on municipal slaughter-houses and to make charges in connection therewith.

(8) To establish acquire erect construct equip and carry on cold storage works and to make charges in connection therewith.

(9) To establish and maintain one or more fire brigades and to make such charges for the service of such brigades and for the water used at fires as may be fixed by bye-laws.

(10) To establish maintain and carry out such sanitary services for the removal and destruction of or otherwise dealing with nightsoil slops rubbish and refuse of all kinds and to make such charges for the same as the council may from time to time think fit.

(11) To erect construct equip and carry out sewerage or drainage works within the municipality or beyond its limits.

(12) To establish acquire erect construct equip and carry on lighting heating or power supply works within the municipality or beyond its limits.

(13) To establish acquire construct lay down equip maintain and work tramways and to make charges in connection therewith.

(14) To establish and maintain in connection with any tramways worked by the council a service for the carriage and delivery of parcels within the municipal area and to make charges for such service under such regulations and conditions as may be approved by the Lieutenant-Governor.

(15) To establish erect construct equip and maintain either within or without the limits of the municipality for the use of the inhabitants of the municipality hospitals whether permanent or temporary for the reception of patients suffering from infectious diseases and to make charges for treatment in such hospitals and to provide treatment for poor patients free of charge.

(16) To establish maintain carry on and add to an art gallery.

- (17) To establish maintain and carry on
(a) public libraries and museums ;
(b) botanical and zoological gardens parks and open spaces ;
(c) public baths and washhouses ;
(d) public closets, urinals and lavatories ; and to make charges in connection therewith.
- (18) To plant trim or remove trees in roads streets and open spaces and to light roads streets and open spaces and to erect and maintain lamps for that purpose.
- (19) To establish maintain and carry on bands for musical performances in public places and generally to provide musical entertainments in such places and make charges in connection therewith.
- (20) To make grants of money towards the establishment or maintenance of the institutions herein mentioned not being of a private character ; (that is to say) hospitals libraries art galleries museums asylums for the aged destitute or infirm homes for destitute orphans and scientific institutions.
- (21) To take a census of the inhabitants of the municipality and to contribute to the cost of any such census undertaken by any other authority.
- (22) To enter into any contract or contracts with any municipality board of health or other corporation or company person or persons to secure or further the carrying out beyond the limits of the municipality of any work or undertaking which may be within the powers of the council.
- (23) To sell all by-products resulting from the carrying out of any works or undertakings which may be within the powers of the council and also to let sell or otherwise dispose of any movable or immovable property ; provided that except in the case of immovable property acquired under the Johannesburg Insanitary Area Expropriation Ordinance 1903 or other immovable property as to which special provision has been made no sale of immovable property shall take place and no lease such as is required by law to be executed before a notary public shall be granted without the sanction of the Lieutenant-Governor.
- (24) To incur all expenditure necessary for the carrying out of any purpose of this Ordinance or any amendment thereof or of any municipal purpose which shall include a reasonable amount for public entertainment and for travelling and personal expenses of members and officers on business of the council.
- (25) To contribute to any provident or benevolent fund intended for the benefit of the officers and servants of the council and to grant pensions or gratuities to officers or servants of the council on their retirement from the council's service or otherwise.
- (26) To pay the medical or funeral expenses of any employee of the council who suffers injury or dies as the result of an accident occurring in the course of his employment or of illness contracted in consequence of such employment.
- (27) To grant gratuities to the wives or relations of deceased officers and servants of the council.

(28) To promote and oppose legislation in the interest of the municipality.

(29) To do all things necessary for carrying out all the purposes for or in regard to which the council is authorised from time to time to make alter or revoke bye-laws or regulations and for carrying into effect all such bye-laws or regulations.

Burial of destitute persons.

25. It shall be the duty of the council to provide for the burial of destitute persons dying within the limits of the municipality.

Power to establish cemeteries beyond the limits of the municipality and tramways in connection therewith.

26. It shall be lawful for the council subject to the approval of the Lieutenant-Governor to establish and maintain cemeteries beyond the limits of the municipality and to establish maintain and work tramways to serve such cemeteries and the council shall have the same power of making bye-laws for any such cemetery and tramway and of making charges in connection therewith as the council would have if the same were within the municipality and any bye-laws relating to cemeteries or tramways for the time being in force within the municipality may by resolution of the council be applied to any cemetery or tramway established under this section and on being so applied shall immediately have full force and effect in relation thereto.

Numbering of houses and naming of streets.

27. (1) The council may from time to time cause the houses buildings or erections fronting upon all or any of the streets roads thoroughfares footpaths sidewalks squares and open spaces to be marked with numbers as it thinks fit and may cause the name by which any street road thoroughfare footpath sidewalk square or open space is to be known to be put up or painted on a conspicuous part of any house building fence wall or place fronting thereon and may further at its discretion change or vary any such number or name as aforesaid whether such number or name existed before the date of this Ordinance or not.

(2) Any person destroying pulling down or defacing any such number or name or putting up any number or name different from the number or name put up by the council without its permission shall be liable on conviction to a penalty not exceeding ten pounds for every such offence.

Power to inspect wells tanks and cisterns and to close the same.

28. The council shall have power by themselves or their officers to inspect all wells tanks and cisterns within the municipality the water wherein or wherefrom is used or likely to be used by man for drinking or domestic purposes or for the manufacture of drinks for the use of man or as an ingredient in the manufacture of any article intended for food for the use of man ; and if on any inspection as aforesaid or on the representation of any person it shall at any time appear that any such water is so polluted as to be injurious to health or that any bye-laws in respect thereof have not been complied with the council shall call upon the owner or occupier of the premises to which the well tank or cistern belongs forthwith to close or remedy the same and failing compliance with such notice the council may take proceedings before any competent court whether by way of summons or application ; and on any proceedings against such person for such non-compliance or for breach of any bye-law

framed in pursuance hereof the court may in the event of conviction make an order directing the well tank or cistern to be permanently or temporarily closed by such person or such other order as may appear requisite or necessary to prevent injury to the health of persons using the water therefrom and may in addition sentence the person convicted to a fine not exceeding five pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding one month; and the court may further if it appear necessary cause the water to be analysed at the cost of the council and the court in making any such order may further authorise the council if the person on whom an order is made by virtue hereof fails to comply with the same within such period as the court shall deem reasonable to do whatever may be necessary in the execution of such order and all expenses incurred by them may be summarily recovered from the person on whom the order was made; provided that in the case of any well tank or cistern as aforesaid being situated upon any unoccupied ground the owner whereof (or some person duly authorised to represent him) cannot after reasonable enquiry be found within the municipality any such notice summons or other process as aforesaid shall be deemed to be sufficiently served if the same be affixed to such tank or cistern or to any building erection post or board upon or in the immediate vicinity of such well tank or cistern.

29. The council shall have power by themselves or their servants at any time of the day or night and without notice to enter upon or inspect or take samples from or require information in respect of the condition and working of all gathering grounds springs reservoirs filter-beds water purification or pumping works or other sources of water supply storage or distribution whether situated within or without the municipality the water wherein or wherefrom is used or is likely to be used by man within the municipality for drinking or domestic purposes.

Power to inspect water supply.

30. (1) Whenever it appears to the council on the certificate of the medical officer of health that any premises are in consequence of defective or unsuitable construction or arrangement bad condition want of light air or ventilation or other sanitary defect liable to retain engender or spread the infection of any disease and that by reason of such liability the occupation of such premises constitutes or would constitute if the same were occupied a grave danger to the public health or to the health of the inhabitants of such premises or of any neighbouring premises the council may after giving not less than seven days' notice in writing of its intention to the owner of such premises and to the occupying tenants (if any) apply to the court of the resident magistrate for an order closing such premises and the court may upon such application make an order closing such premises and prohibiting the use and occupation thereof until such time as it shall be satisfied that such alterations have been made whether by removal or reconstruction of any building or otherwise as to prevent any such danger as aforesaid resulting from the occupation of such premises and the court may thereafter on being so satisfied on the application of the owner of such premises withdraw such order as to the whole or any part

Power of council to close premises.

of such premises ; provided that before making such application the owner of such premises shall give not less than forty-eight hours notice in writing to the council of his intention to make the same.

(2) (a) Where a closing order has been made in respect of any premises the council shall forthwith cause a copy of such order to be affixed in a conspicuous position on the premises ;

(b) any person who shall use or occupy any premises the use and occupation of which have been prohibited by any closing order during the time that such order remains in force shall be liable to a penalty not exceeding ten pounds and to a further penalty not exceeding two pounds for every day during which such use or occupation continues and in default of payment of any such penalty to imprisonment with or without hard labour for a period not exceeding three months ; provided however that after the affixing of a copy of such order in the manner aforesaid forty-eight hours grace or such longer time as the council may determine shall be allowed to any person occupying the premises at the date when the copy of such order was so affixed before such order is enforced against such person.

(3) The court of the resident magistrate of the district may upon application by the council order the cleansing and disinfecting of any premises in respect of which a closing order has been or may be made under this section and shall by such order specify a time within which such cleansing or disinfecting shall be carried out ; and in default of full compliance with any such order the council may enter upon any such premises and do all things necessary for completely executing the same and may recover the costs and expenses of and incidental to such execution from the person against whom such order has been made by action in a competent court. Any such order may be made upon the owner or on the occupier of the premises aforesaid.

(4) (a) Any notice required under this section to be given to any person may be served by delivering the same to or at the residence or place of business of the person to whom it is addressed or may be served by post on such person ;

(b) when the owner of any premises to whom notice is required to be given under this section does not reside or carry on business within the municipality or cannot after reasonable enquiry be found therein such notice shall be deemed to be sufficiently given to such owner if affixed to the premises to which the same relates.

(5) The term " premises " as used in this section means and includes any building room tenement hut shed or van or any yard or other land in connection therewith.

31. The sole and exclusive right is hereby given to the council to establish maintain and work electric or mechanically worked tramways for public use within the municipality.

32. The council shall have the power to supply on such terms and conditions as may be fixed by the council electricity gas and water for all purposes for which the same can be used to any land buildings or premises.

Exclusive right as to electric or mechanically worked tramways.

To supply electricity gas and water.

33. The council shall have full power and authority to do all things necessary for the laying of main and branch wires and lines of pipes to convey electric current gas or water underneath and over the streets roads and thoroughfares of the municipality and to connect the said wires lines or pipes with any premises at the request of the owners or occupiers thereof.

To lay pipes and wires in streets.

34. The council shall have the same powers and be subject to the same restrictions for laying carrying constructing altering or removing mains pipes wires and cables within or without the municipality for the purpose of supplying water gas or electricity as they have and are subject to for laying carrying constructing altering or removing sewers within or without the municipality respectively by the law for the time being in force and all mains pipes wires or cables constructed by the council shall be vested in the council and the council or any other person duly authorised by them shall at all times have a right of access to private property for purposes of inspection maintenance alteration or repair of such mains pipes wires or cables.

General power with regard to main pipes wires and cables.

35. If any person neglect to pay any charge for electricity gas or water or any other sum due to the council in respect of the supply thereof the council may cut off such supply and for that purpose may cut or disconnect any pipe electric wire line or other work through which the electricity gas or water may be supplied and may until such charge or other sum together with any expenses incurred by the council in cutting off such supply of electricity gas or water are fully paid but no longer discontinue the supply thereof to such person.

Power to cut off supply.

36. Any person who unlawfully and maliciously cuts or injures any wire line pipe or other work used for the conveyance of electricity gas or water as aforesaid shall be guilty of an offence against this Ordinance and shall be liable upon conviction to a fine not exceeding one hundred pounds or to be imprisoned with or without hard labour for any period not exceeding two years.

Penalty for injuring pipes or wires.

37. Any officer appointed for that purpose by the council may at all reasonable times enter any premises to which electricity gas or water is or has been supplied by the council in order to inspect the pipes electric wires lines meters accumulators fittings works and apparatus for the supply of electricity gas or water belonging to the council and for the purpose of ascertaining the quantity of electricity gas or water consumed or supplied or where a supply of electricity gas or water is no longer required or where the council is authorised to take away and cut off the supply of electricity gas or water from any premises for the purpose of removing any pipes electric wires lines accumulators fittings works or apparatus belonging to the council repairing all damage caused by such entry or removal.

Power of entry into premises supplied and of cutting off supply.

38. It shall be lawful for the council

(a) to establish maintain and control within or without the limits of the municipality locations for natives and coloured persons and to erect and maintain buildings in such locations for the housing of such persons ;

(b) to establish maintain and control within or without the limits of the municipality bazaars or townships for the

Establishment of native locations and Asiatic bazaars.

exclusive occupation of Asiatics and to erect and maintain buildings in such bazaars or townships for the accommodation of Asiatics ;

provided that no such location bazaar or township shall be established within the area of any other municipality save with the consent of the council thereof.

Provisions
with regard to
the tenure of
plots in native
locations
and Asiatic
bazaars

39. (1) It shall be lawful for the council to grant leases of plots in any native location or asiatic bazaar or township established by the council or under its control for any term not exceeding thirty-three years in such form and subject to such conditions as the Lieutenant-Governor may approve.

(2) Such leases shall not require to be executed before a notary public and such leases and cessions thereof shall not require to be registered except in a register to be kept by the council in accordance with such regulations as the Lieutenant-Governor may prescribe and any such lease and any cession of such lease shall if so registered be valid and binding for all purposes.

Any transfer duty or stamp duty payable on any such lease or cession thereof under any law relating to transfer duty or stamp duty shall be paid in manner prescribed by such regulations aforesaid. The council shall account to the Colonial Treasurer for any transfer duty or stamp duty payable upon any registration effected under such regulations aforesaid.

CHAPTER IV.

BYE-LAWS.

Existing bye-laws and regulations.

40. The existing bye-laws and regulations of the municipality in so far as the same are not repugnant to or inconsistent with this Ordinance shall until amended or repealed continue to be of full force and effect.

Council may make alter and revoke bye-laws and regulations.

41. The council may from time to time make alter and revoke bye-laws or regulations for all or any of the following purposes :—

(1) For regulating any of the things which the council is empowered under section *twenty-four* of this Ordinance to do establish maintain or carry on and the charges to be made in respect thereof.

(2) For regulating the proceedings of the council and the duties of their officers and servants and preserving order at council meetings.

(3) For preventing and extinguishing fires and compensating the owners of buildings removed to prevent the spread of fires and for regulating fire brigades and the charges which may be made for the services of such brigades and for the water used at fires.

(4) For preserving public decency.

(5) For suppressing nuisances houses of ill fame and gaming houses.

(6) For establishing and licensing public places of recreation.

- (7) For regulating and licensing swimming baths and bathing establishments and for regulating bathing in any open piece of water.
- (8) For licensing and regulating boating establishments and for licensing boats whether kept for hire or otherwise and for regulating the use of and fixing the number of persons to be carried in such boats.
- (9) For licensing controlling and regulating theatres music halls public halls concert rooms public billiard rooms and public bagatelle rooms and other places of public entertainment.
- (10) For prohibiting regulating or licensing noisome and offensive trades and compelling residents to keep their premises free from offensive or unwholesome matters.
- (11) For imposing a tax upon the keeping of dogs and for providing for the seizure sale or destruction of ownerless dogs and of dogs in respect of which the tax has not been paid and also for dealing with vicious or dangerous dogs and such as create disturbance by barking or otherwise.
- (12) For preventing or regulating and controlling the keeping of bees and of wild or dangerous animals.
- (13) For preserving and protecting wild birds and animals.
- (14) For securing the eradication of the weed *Xanthium spinosum* or other noxious weeds from land within the municipality and for compelling owners or occupiers of such land to cause any such weed to be eradicated on their land.
- (15) For planting and preserving trees and shrubs and for prohibiting or regulating and controlling the planting of trees in roads streets or squares and for maintaining cutting or removing any such trees and preventing the removal or injury thereof.
- (16) For granting licences or permits for the making of bricks or for digging or removing clay or gravel or for quarrying stone or for cutting firewood brushwood or grass upon municipal lands and for prescribing the fees (if any) to be paid for the same.
- (17) For regulating and licensing woodsawyers.
- (18) For regulating and licensing pawnbrokers.
- (19) For regulating and licensing pedlars and hawkers ; provided that no farmer or gardener who sells only fresh farm produce grown on land occupied by him shall be required to take out a pedlars or hawkers licence.
- (20) For preventing the spread of contagious or infectious diseases and for preserving the public health.
- (21) For regulating sewerage or drainage and for compelling the connection at the owners expense of private drains with public drains sewers or pipes and for regulating the construction by the council at the owners expense of all house drains in so far as they connect with and extend from the main sewer to the boundary of the property concerned.
- (22) For fixing the charges which may be made for the use of the councils sewers and sewerage works in respect of any premises which are connected therewith.

(23) For preventing the use and securing the closing of cesspools and for compelling and regulating the provision construction use and repair of and for preventing damage to earth closets water closets privies ashpits urinals sinks fixed baths and fixed basins waste pipes drains and slop tanks in connection with buildings.

(24) For granting licences but without charging any fee therefor to plumbers and drainlayers authorising them to carry out plumbing or drainlaying work for the installation alteration or repair of any system of water supply or drainage connected or intended to be connected with any municipal water main or sewer and for regulating such plumbers and drainlayers and for prohibiting the carrying out of any such work by any unlicensed person.

(25) For establishing and maintaining and compelling the use of any sanitary or other service which the council is authorised to carry out or regulate or which may be established by virtue of any powers vested in the council.

(26) For regulating the removal of nightsoil stable litter filth and refuse from private premises ; and from all streets roads and public places and for fixing the charges for such removal.

(27) For the prevention and abatement of nuisances including such as though arising beyond the municipality cause annoyance or danger or injury to health within the municipality and for the prevention of the keeping of animals on any premises so as to be a nuisance or to be injurious to health.

(28) For ascertaining the existence and cause of any nuisance arising from any drain closet cesspool or water supply sink trap syphon pipe or other work or apparatus connected therewith and for remedying the same and recovering the expenses incurred by the council in respect thereof.

(29) For regulating and licensing the killing of cattle and other animals and sale of butchers meat and the establishment and locality of slaughter-houses and meat shops and their maintenance in a cleanly and proper state.

(30) For regulating the use and management of municipal slaughter-houses and the making of charges in connection therewith and for prohibiting the slaughtering of animals intended for the food of man elsewhere in the municipality than in municipal slaughter-houses except in the case of animals which the occupier of any premises may slaughter thereon for his own or his family's consumption.

(31) For licensing and regulating tea rooms cafés restaurants hotels eating boarding and lodging houses and all dairies milkshops cowsheds bakehouses butchers shops and all factories and places where articles of food or drink are manufactured or prepared for sale or use or sold.

(32) For licensing and regulating kaffir eating-houses.

(33) For licensing and regulating Asiatic tea rooms or eating-houses.

(34) For preventing the possession sale or offering for sale or the conveyance or handling otherwise than for purposes

of destruction and for ensuring the destruction when necessary in the opinion of the medical officer of health of diseased animals and of diseased meat fish or other articles of food or drink unfit for the use of man and for preventing the adulteration misdescription or reduction below a proper standard of quality and for securing the sale in a pure state of milk or any other article of food or drink or any drug and for authorising the entry on and inspection of premises vehicles or packages for securing any of the objects of this sub-section.

(35) For regulating the manufacture of chemicals.

(36) For regulating and controlling the conveyance of meat or dead animals through or along any public streets or public thoroughfares.

(37) For the regulation or prevention of washing of clothes on public or private premises and the licensing of persons for washing and laundry work.

(38) For regulating barbers and hairdressers and barbers and hairdressers shops.

(39) For securing the regularity of lines and level of buildings and of the architecture of buildings and the removal alteration and prevention of projections or obstructions in front of buildings.

(40) For enabling the council to prevent the alteration erection or use of buildings the class or character of which are either in themselves or from the circumstances or nature of the locality in which they are placed a disfigurement to the town or an annoyance to the inhabitants thereof.

(41) For compelling the pulling down removing or rendering safe of all buildings walls bridges earthworks and stoeps of an unsafe or dangerous character or which have been allowed to fall into a dilapidated and ruinous condition and for doing such work at the cost of the owner.

(42) For regulating the inspection of buildings and structures by the council and its officers and for regulating the erection and use of scaffolding and hoarding during the construction demolition repair or alteration of any building and the charging of fees in connection with any such hoarding.

(43) For determining and regulating

(a) the structure of walls foundations roofs chimneys windows guttering and down-piping and all other parts of buildings whether new or already existing in order to secure stability sufficient height light and ventilation and the proper carrying off of rain-water as well as for the prevention of fires and for purposes of health ;

(b) the sufficiency of the space about buildings in order to secure a free circulation of air and the proper ventilation of buildings ;

(c) the closing of buildings or parts of buildings unfit for human habitation and the prohibition of their use for habitation or occupation.

(44) For the giving of notice and the deposit of plans and sections by persons wishing to construct or alter buildings

for the approval or otherwise of all plans and sections of any such buildings or alterations by the council and the charging of fees in connection therewith and for the removal alteration or pulling down at the expense of the owner of any work begun or done in contravention of any bye-law or regulation and for preventing the occupation of any new or altered buildings until a certificate of the fitness thereof for habitation shall have been issued signed by the medical officer of health.

(45) For preventing the discharge of any guttering or down pipes on to any pavement or sidewalk and securing regulating and controlling the laying down of pipes to carry any outflow therefrom to such gutter or drain as may be authorised or approved by the council for the purpose.

(46) For regulating and controlling the use and erection of any temporary or movable structures whether standing on wheels or otherwise.

(47) For the giving of notice and the deposit of plans by persons wishing to lay out any building lots or new townships: for the approval or otherwise of all such plans by the council for securing uniformity and continuity of streets roads and thoroughfares to or from any private property and convenient access to any building lots on which buildings have been erected for requiring streets roads and thoroughfares to be laid out with due regard to the drainage thereof for requiring such provision to be made by and at the expense of the person laying out any new building lots or new township either by the registration of servitude or otherwise as will secure to the council the right to use and control for the purpose of the drainage of surface water any existing water courses within the area shown on the plan and for preventing the laying out of new building lots or townships or the subdivision of existing building lots without the approval of the council and for the charging of fees for the examination of such plans.

(48) For preventing the withdrawal cancellation or alteration except with the consent of the council of any township plan which has been approved by the council or the closing up of any streets roads or open spaces shown on such plan except with the like consent.

(49) For regulating the size of pieces of ground on which buildings may be erected.

(50) For regulating the width curbing paving guttering gravelling and cleansing of roads and streets.

(51) For establishing and regulating public markets and market dues and regulating public sales and the charging of fees in connection with public sales held on any public square or open space.

(52) For regulating and controlling the sale and use and the inspection verification and stamping of weights measures and weighing instruments and the charging of fees in connection therewith.

(53) For regulating and controlling the sale of goods wares merchandise or other things by weight or measure.

(54) For regulating and controlling the use of gas water and electric meters and the testing and stamping of such meters and the charging of fees in connection therewith.

(55) For preventing or regulating and controlling the manufacture use storage sale and removal and licensing the manufacture and storage of dynamite petroleum and other explosives or combustibles.

(56) For regulating the construction and maintenance of all installations for the supply of light heat or power by means of electricity gas or otherwise.

(57) For regulating lighting with gas electricity or otherwise.

(58) For regulating and controlling the generation of acetylene gas or other inflammable or explosive gas and the construction and use of all apparatus connected therewith and for preventing or regulating the storage of liquid acetylene or carbide of calcium.

(59) For regulating and controlling traffic processions and gatherings in public places.

(60) For preventing and removing obstructions in streets roads squares and public thoroughfares foot-pavements and sidewalks for dealing with diseased animals and the burial of dead animals and the driving of live stock through streets or thoroughfares and with live stock found straying in any streets or thoroughfares.

(61) For preventing any person or vehicle from carrying or conveying any article burden or load so as to obstruct or incommode passengers or vehicles in any street sidewalk or foot-pavement and for preventing the wheeling of wheelbarrows cycles or other vehicles on any sidewalk or foot-pavement except for the purpose of crossing the same to or from any house or building.

(62) For preventing persons from congregating with others and thus causing an obstruction in any sidewalk thoroughfare or open space except such as may be set apart for the purpose.

(63) For regulating supervising and licensing porters public carriers carters cabs jinrickshas and vehicles standing or plying for hire and the drivers thereof and for fixing the amount of licence fees to be paid the charges and fare to be made and the number of passengers to be carried.

(64) For regulating restricting and licensing the use of bicycles tricycles motor cars and velocipedes within the municipality.

(65) For licensing and regulating locomotives tramcars omnibuses and all private vehicles.

(66) For prohibiting or regulating and licensing the erection of wires of any kind in along under or over any street or thoroughfare ; provided that such wires as may be erected for public purposes by the Postmaster-General or Railway Administration shall not be prohibited or regulated and no licence shall be required in respect thereof.

(67) For determining regulating and licensing the places where and the manner in which placards bills advertising

boards or advertisements or notices of any kind shall be displayed in or near or in view of any street or thoroughfare and for prohibiting indecent advertisements or pictures from being so displayed.

(68) For prohibiting or regulating and licensing the use and passage of advertising vans sandwich boards lanterns flags screens or other movable advertising devices in or along any street or thoroughfare.

(69) For preventing the disfiguring of the front of buildings or fences and for prohibiting or licensing the use or regulating the size description and fixing of signboards screens private lamps sun blinds or other devices attached to or connected with any buildings or fences by means whereof any advertisements or notices of any kind may be displayed.

(70) For regulating and controlling street decorations and for prohibiting regulating and controlling the erection and removal of temporary platforms seats and other structures for the use of the public at any meeting or entertainment or for the accommodation of spectators at any procession ceremony or spectacular display of any kind.

(71) For regulating the supply and distribution of any water under the control or management of the council and preventing waste and misuse thereof.

(72) For preventing the pollution of any water which the inhabitants have a right to use.

(73) For preventing the pollution of gathering grounds spring wells reservoirs filter beds water purification or pumping works tanks cisterns or other sources of water supply or storage whether situate within or without the municipality the water wherein or wherefrom is used or is likely to be used by man within the municipality for drinking or domestic purposes.

(74) For compelling the provision of a proper and sufficient water supply for every dwelling-house school store factory or workshop.

(75) For maintaining and regulating locations for natives and other coloured persons established or controlled by the council.

(76) For enabling the council to control and supervise the housing of natives by employers and to prevent annoyance to persons in the neighbourhood arising therefrom to compel all natives not residing on the premises of their European employers or not holding letters of exemption whilst lawfully within the municipality to reside at any location for natives which may have been established by the council and for enabling the council to regulate the use of public streets by natives and for prohibiting the carrying by natives of knobkerries assegais or other sticks or weapons and further for enabling the council to licence native wash-boys and native labourers other than boys or labourers employed in industrial concerns or domestic service.

(77) For maintaining and regulating bazaars or townships for Asiatics established or controlled by the council.

(78) For regulating the taking by the council of any census of the inhabitants of the municipality defining the duties of census officers appointed by the council compelling the giving of information required for the purpose of such census and prohibiting the divulging of such information.

(79) For protecting from damage or interference any municipal works or property situated or being in under or over any street road or public place or in or upon such portion of the farm Klipspruit No. 58 as is included within the area of the municipality.

* 79 (a) *For licensing controlling and regulating places used for the purpose of selling publicly or exposing to public sale, any cattle, horses, sheep, goats, pigs, poultry or other live stock.*

* 79 (b) *For compelling and regulating the submission to the council of all meat or dead animals intended for the food of man which may be conveyed or transported into the municipal area by the owners or consignees of the same and at their expense in order that such meat or dead animals may be inspected and passed by the council for regulating the branding or stamping of such meat or dead animals and the fees to be charged therefor and for preventing the sale or use of such meat or dead animals for the food of man until the same have been inspected and passed by the council. Provided that this sub-section shall not apply to meat or dead animals which may be conveyed or transported into the municipal area by or for any person for consumption by himself or his household.*

(80) Generally for maintaining the good rule and government of the municipality :

but no such bye-law or regulation shall be contrary to the provisions of this Ordinance.

42. No bye-law or regulation shall be made or amended by the council until a copy of such proposed bye-law or amendment be deposited at the office of the council for inspection by any person at all reasonable times and a notice be published in some newspaper generally circulating in the municipality seven days prior to the meeting of the council held for the purpose of making such bye-law regulation or amendment setting forth the general purport of the proposed bye-law or regulation or amendment of the same and stating that a copy thereof is open to inspection as aforesaid.

Bye-laws to be published before made or amended.

43. Where any proposed bye-law directly affects any mining company in respect of the management of its mining operations or the control of the property on which such operations are carried on the following procedure shall be followed :

Procedure to be followed in case of bye-laws affecting any mining company.

(a) the proposed bye-law as passed shall be forwarded by the council to the Chamber of Mines or to any association representing for the time being the companies engaged in mining operations within the municipal area ;

* Sub-secs. 79 (a) and 79 (b) were added by Act No. 6 of 1910, sec. 1.

(b) if the Chamber of Mines or such association as aforesaid desires to object to such bye-law on the ground that the interests of any mining company would be unduly prejudiced thereby it shall transmit to the council a statement of such objections to the proposed bye-law within a period of fourteen days from the date on which such bye-law was received by it from the council ;

(c) on receipt of such statement within the time specified the council shall in submitting such bye-law for the approval of the Lieutenant-Governor forward a copy of such statement together with a statement of any observations which they may desire to make thereon for the consideration of the Lieutenant-Governor ;

(d) the Lieutenant-Governor shall refer the proposed bye-law together with the statements hereinbefore mentioned to the Commissioner of Mines for report before approving or rejecting such bye-law ;

(e) the foregoing procedure shall be followed in any case where in the course of the discussion upon any bye-law by the council a motion shall be proposed and seconded that it be so dealt with.

Approval of
bye-laws by
Lieutenant-
Governor and
publication in
Gazette.

44. After any bye-law or regulation has been passed by the council it shall be submitted for the approval of the Lieutenant-Governor and if approved shall be published in the *Gazette* and thereupon such bye-law shall have the force of law in the municipality.

Power of
Lieutenant-
Governor to
repeal.

45. Every bye-law or regulation in force in the municipality may be repealed by the Lieutenant-Governor.

Power to
impose
penalties.

46. Any bye-law or regulation made under this Ordinance may impose a penalty for any breach thereof and may also impose different penalties in case of successive breaches but no penalty shall exceed fifty pounds. And any such bye-law or regulation may provide that in addition to any such penalty any expense incurred by the council in consequence of any breach of such bye-law or regulation or in the execution of any work directed by any such bye-law or regulation to be executed by any person and not executed by him shall be paid by the person committing such breach or failing to execute such work.

Copy of
Gazette to be
evidence of
bye-law.

47. A copy of the *Gazette* containing any bye-law or regulation of the council shall be evidence of the due making of such bye-law or regulation and the contents thereof.

Power of
arrest.

48. Any officer of the council in uniform or bearing a visible badge of office authorised thereto in writing by the council shall have power to arrest without warrant any person who shall in his presence commit any offence against this Ordinance or any bye-law in force thereunder and detain such person until he can be delivered into the custody of a constable or police officer to be dealt with according to law ; provided that no person shall be arrested or detained without warrant unless there shall exist reasonable ground for believing that except by the arrest of the person offending he could not be found or made answerable to justice without delay trouble or expense.

49. All offences against any bye-law or regulation in force in the municipality shall be deemed to be offences against this Ordinance and in any prosecution for contravening the provisions of any such bye-law or regulation it shall be sufficient to allege that the accused is guilty of contravening a bye-law or regulation in force in the municipality and to allege the act constituting such contravention describing the bye-law or regulation by number.

Directions for drafting of prosecutions.

50. The council may prosecute summarily in the court of the resident magistrate for all breaches of its bye-laws or regulations ; and the provisions of any law relating to prosecutions by private persons shall apply to all such prosecutions.

Prosecutions.

51. The council may order proceedings to be taken for the recovery of any penalties under and for punishment of any person offending against this Ordinance and may order the expenses of such proceedings to be paid out of the revenue of the council.

Proceedings for recovery of penalties.

52. Every person guilty of an offence against this Ordinance or any bye-law in force in the municipality shall for every such offence be liable to the penalty expressly imposed by this Ordinance or by the bye-law and if no penalty be imposed then to a penalty not exceeding ten pounds.

Penalties where not otherwise provided.

53. All penalties or other moneys payable in respect of any offence against this Ordinance or any bye-law in force in the municipality may be recovered before the court of the resident magistrate of Johannesburg.

Penalties recoverable before resident magistrate Johannesburg.

54. Whenever any penalty shall have been imposed under the provisions of this Ordinance or of any bye-law or regulation in force in the municipality and the person convicted shall not forthwith pay the same the court may direct that such person be imprisoned with or without hard labour for a period not exceeding one month if the penalty imposed do not exceed five pounds or not exceeding three months if the penalty be above five pounds and such person shall be imprisoned as aforesaid unless he shall sooner pay the penalty.

Fines enforceable by imprisonment.

55. All penalties recovered for offences against the bye-laws of the municipality or for offences against this Ordinance committed in the municipality or in any way in respect of the municipality or any bail forfeited for the failure of any person charged with any such offence to appear to answer such charge shall be paid into the revenue of the council.

Penalties payable to municipal fund.

CHAPTER V.

FINANCIAL PROVISIONS LICENCES AND SPECIAL RATES.

56. The revenue of the council shall consist of

- (a) all rates levied by the council ;
- (b) all fines imposed by a competent court and forfeited bail bonds for the contravention of bye-laws and regulations of the municipality and of the provisions of this Ordinance ;
- (c) all licence moneys on licences issued by the council and all market dues tolls rents pound fees and taxes on dogs ;

Revenue of the council.

(d) all charges made by the council for the supply of electricity gas water and sanitary services and also all charges or profits arising from any service or undertaking carried on by the council by virtue of any powers vested in it.

All moneys due for sanitary services shall be recoverable from the owner of the premises in respect of which the services were rendered together with interest thereon at the rate of one per cent. per month for every month or portion of a month for which the same remain unpaid after the expiration of thirty days from the end of the period in respect of which they are made payable under the council's bye-laws for the time being in force; provided that the owner shall in the absence of any agreement to the contrary be entitled to recover from the occupier of the said premises for the time being any such charges paid by him in respect of the occupation of the said occupier. No transfer or cession of any such premises shall be passed before any registration officer until a receipt or certificate signed by the town clerk or other person authorised by the council shall be produced to such officer showing that all moneys due in respect of such services have been paid.

Fees for licences.

57. The council may charge for any licence which the council is empowered to issue such fees as may be fixed by the council's bye-laws for the time being in force.

Power of council to refuse licence.

58. The council shall have power to refuse to grant any licence to carry on any trade or business which it has power to grant in accordance with bye-laws in force in the municipality on any of the following grounds:

- (a) that the applicant has been convicted three times within the three years preceding his application of contravening the law or the bye-laws of any municipality with regard to the conduct of the trade for which the licence is applied for in such a manner as to cause danger to the public health;
- (b) that the premises on which the applicant intends to conduct his trade do not conform to the requirements of the council's bye-laws;

provided however that any applicant for a licence whose application has been refused may appeal against the council's decision to the court of the resident magistrate and on such appeal in the event of the council failing to satisfy such court that the licence was refused on good and sufficient grounds such court may make an order requiring the council to grant such licence and such licence shall be granted accordingly; and provided further that it shall be within the discretion of the council to refuse to grant licences to the hauler of any jinricksha or to the driver of any road locomotive tramcar omnibus motor car ~~car~~ trolley or other vehicle plying for hire anything to the contrary in this Ordinance notwithstanding.

Power of council to refuse to licence certain premises.

59. The council shall have power to refuse to licence any premises as a theatre music hall public hall concert room or other place of amusement or as an Asiatic tea-room or eating-house or as a kaffir eating-house on any of the grounds mentioned in the preceding section and also on any one or more of the following grounds:

- (a) that the applicant has failed to produce satisfactory evidence of good character ;
- (b) that the premises in respect of which a licence is sought or any adjacent premises owned or occupied by the applicant are frequented by persons of bad character ;
- (c) that the granting of such a licence in respect of the premises for which the same is sought is calculated to cause nuisance or annoyance to persons residing in the neighbourhood ;
- (d) that the granting of such a licence would be contrary to the public interest ;

provided however that the refusal of the council to grant any licence on any of the grounds herein stated shall be subject to the same appeal as is provided in the preceding section.

60. On the conviction of any person holding a trade licence granted by the council for any contravention of the law or the council's bye-laws with regard to the conduct of such trade it shall be lawful on the application of the council for the resident magistrate before whom such person is convicted to cancel or suspend his licence and order that no new licence to carry on such trade within the municipality shall be granted to such person for a period not exceeding two years from the date of such cancellation and thereupon such person shall become disqualified to hold a licence during such period of cancellation or suspension.

Penalty on conviction of law or council's bye-laws.

61. (1) The council shall have power to refuse to grant a licence to carry out any such plumbing or drain-laying work as is mentioned in sub-section (24) of section *forty-one* of this Ordinance to any person on the following ground in addition to the grounds mentioned in section *fifty-eight* of this Ordinance namely that the applicant is not competent to carry out plumbing or drain-laying work in a proper and workmanlike manner ; provided however that the refusal of the council to grant a licence on the ground herein stated shall be subject to the same appeal as is provided in the said section.

Power to refuse licences to plumbers and drain-layers and to cancel licences.

(2) The council shall also have power to cancel any such licence as aforesaid granted to any plumber or drain-layer if the council shall be satisfied that such person has done any such plumbing or drain-laying work as aforesaid in a negligent or unworkmanlike manner to the injury of any person or property or contrary to any of the council's bye-laws ; provided that prior to such cancellation the person whose licence it is proposed to cancel shall be given an opportunity of appearing before a committee of the council and being heard in his own defence.

62. The capital cost of construction as hereinafter defined and any loss that may be incurred in working any line of tramway outside the area defined by a thin black line on the plan annexed to the Johannesburg Municipality Further Powers Ordinance 1903 shall be deemed to be abnormal or extraordinary expenditure within the meaning of section *sixteen* of the Local Authorities Rating Ordinance 1903 incurred in respect of any particular area served by any such tramway and lying outside such thin black line and it shall be lawful for the council with respect to such capital cost and loss in working (if any) to exercise all the powers

Expense of outside tramways to be within Ordinance No. 43 of 1903.

conferred by the said Ordinance. The capital cost of constructing aforesaid shall mean and include the cost of tracks and tramways electrical bonding overhead or other power construction along such tracks and any necessary sites for termini and car stations.

Prescribe certain conditions precedent before council can construct tramways.

63. The following provisions shall apply to the construction of any tramway in respect of which a special rate is proposed to be levied under the last preceding section of this Ordinance :

(1) The council before entering upon the construction of any such tramway shall

(a) pass a resolution by a majority of councillors at the time in office at a meeting of the council held not less than fourteen days after notice shall have been given to the council at a meeting thereof of an intention to move for the construction of such tramway ;

(b) publish daily in twelve issues of each of two or more newspapers circulating in the municipality an advertisement describing shortly the line of tramway which it is proposed to construct stating the area of land which is proposed to be specially rated by the council under the powers of the last preceding section and the proportions if any according to which it is proposed that such special rates should be imposed and naming a place where a plan of the proposed tramway and such area as aforesaid may be seen at all reasonable hours.

(2) If any person interested as owner lessee or occupier of any land proposed to be specially rated by the council objects to the construction of any such tramway or to the imposition of any such special rate or to the proportion according to which it is proposed to impose the same or to the exclusion of any other property from the area of the land proposed to be specially rated and serves notice in writing of such objection on the council at any time within one week of the last publication of the advertisement as provided in the preceding sub-section the council shall not be entitled to proceed with the construction of any such tramway without the sanction of the Lieutenant-Governor unless such objection be withdrawn.

(3) The Lieutenant-Governor may on the application of the council and on due proof of the proper advertisement having been published appoint some person or persons to make an enquiry on the spot into the propriety of the proposed undertaking and the objection thereto and to report to the Lieutenant-Governor on the matters with respect to which such enquiry was directed and on receiving such report the Lieutenant-Governor may make an order empowering the council to proceed with the construction of such tramway in the manner proposed by the council or subject to such conditions and modifications as he may think fit.

Special tramway rates shall be imposed on value of rateable property less deduction or value of buildings.

64. Notwithstanding anything contained in the Local Authorities Rating Ordinance 1903 the council shall for the purpose of any special rate which it may decide to impose with respect to the capital cost of constructing and any loss that may be incurred in working any line of tramway deduct from the value

of the rateable property on which such rate is to be imposed as appearing in the valuation roll such part thereof as represents the value of buildings and impose such rate on the value of such property subject to such deduction as aforesaid instead of on the full value thereof.

65. If at any time within the period allowed under section *sixty-three* of this Ordinance for serving notice of objection on the council with reference to the construction of any tramway and to the special rate proposed in respect thereof the owners of two-thirds of the rateable property on which it is proposed to impose such special rate (such two-thirds being reckoned by value according to the values in the valuation roll for the time being in force but subject to the deduction in the preceding section mentioned) shall sign and cause to be forwarded to the town clerk a petition to the council praying that the council's proposals for the construction of such tramway and the imposition of special rates as set forth in the advertisement with reference thereto may be entirely abandoned it shall not be lawful for the council to proceed further therewith but the same shall forthwith be abandoned and the council shall not again initiate proceedings under the said section with regard to the construction of such tramway until after the expiration of a period of six months from the date when such petition for abandonment is received by the town clerk.

If owners of two-thirds in value of property liable to be specially rated in respect of proposed tramway petition for abandonment of council's proposals council may not proceed.

66. If it shall appear to the council that the amount received or to be received by way of special rates imposed with respect to the capital cost of constructing any line of tramway is in excess of such capital cost the council may refund to persons who have paid such rates or remit in favour of persons liable to pay the same a proportionate part thereof so that the total amount received or to be received by the council by way of such special rates may be approximately equal to the capital cost of constructing such line of tramway.

Excess of special rates over capital cost of constructing tramway may be refunded or remitted.

*67. The capital cost of providing or laying any new water mains required for the purpose of supplying water to any land or premises within the municipality which are not connected to any existing mains shall be deemed to be abnormal or extraordinary expenditure within the meaning of section *sixteen* of the Local Authorities Rating Ordinance 1903 incurred in respect of any particular area served or intended to be served by any such new water mains whether the same are laid within or without such area and it shall be lawful for the council with respect to such capital cost to exercise all the powers conferred by the said Ordinance.

Special water rates.

Any special rate imposed by virtue of this section shall be called a special water rate and all the provisions contained in this Ordinance with regard to the construction by the council of any tramway in respect of which a special rate is proposed to be levied and to the imposition remission or refunding of such rate shall apply *mutatis mutandis* to the providing and laying of any new water mains in respect of which a special water rate is proposed to be levied and to the imposition remission or refunding of any special water rate.

* For approval of water supply north-western suburbs, Johannesburg, and special rates, see Govt. Notice No. 604 of 1907, (*Gazette*, 31/5/07).

Charges for
use of sewers.

68. The council shall have power to make such charges as may be fixed by bye-laws for the use of the council's sewers and sewerage works in respect of any premises which are connected therewith and such charges shall for all purposes be deemed to be charges for sanitary services and shall be recoverable from the owner of any premises which are so connected together with interest thereon in accordance with the provisions of section *fifty-six* of this Ordinance.

Books of
council to be
prima facie
evidence of
sums due.

69. The books and registers of the council and any extracts therefrom certified by the town treasurer shall in any proceedings for the recovery of any sanitary fees or any charges for the supply of gas water or electricity or for any other municipal service be prima facie evidence of the amounts due for the same.

Power to
execute
drainage
works on
private
premises or
to make
advances
therefor.

70. (1) It shall be lawful for the council if it shall see fit at the request of the owner of any premises

(a) to carry out either by its own servants or through contractors any work in connection with the installation or improvement of a drainage system on such premises and the connection of such premises with the council's sewers and to recover from the owner of the premises the expenses incurred in such work which shall include a reasonable charge for supervision and if the work is undertaken by the council without the interposition of a contractor for the use of tools and plant; or

(b) to advance to the owner of any premises the amount of any expenses incurred or to be incurred by him in the execution of any such drainage work on such premises.

(2) The council may agree to accept payment of such expenses and repayment of such advances in such instalments at such times and on such conditions as may to the council appear reasonable together with interest thereon at the rate of six per cent. per annum which shall be charged from the date when the works are completed or the advances are made on such amount as remains for the time being outstanding.

(3) Such expenses and advances shall be a charge upon the premises in respect of which the same are incurred or made and shall be paid to the council by the owner thereof and his successors in title and the instalments thereof as they fall due shall be recoverable from the present or any future owner of the premises in any competent court.

(4) The council shall keep at the municipal offices a register of all expenses incurred and advances made under this section in which shall be shown the total amounts thereof the instalments in which the same are payable the premises in respect of which the same have been incurred or made and the balances for the time being outstanding and such register shall be open at all reasonable times to the inspection of any person free of charge. Such register and any extract therefrom certified by the town treasurer shall in any proceedings for the recovery of such expenses and advances and interest thereon and any instalments thereof be prima facie evidence of the matters contained therein.

(5) No transfer or cession of any premises within the area of the municipality shall be passed before any registration officer

until a receipt or certificate signed by the town clerk or other person authorised by the council shall be produced to such officer showing that all sums if any due on account of any expenses incurred or advances made by the council under this section in respect of such premises and interest thereon have been paid.

(6) Nothing in this section shall limit or affect the power of the council to execute any work which the council is by law or under any bye-law in force in the municipality empowered to execute and to recover the cost of executing such work from any person who is liable therefor.

CHAPTER VI.

ACCOUNTS AND AUDIT.

71. The council shall cause proper books to be provided and true and regular accounts to be entered therein of all sums of money received and paid on account of and for the municipality and of the several purposes for which such sums of money have been received and paid.

Accounts to be kept.

72. The Lieutenant-Governor may appoint one or more persons to examine from time to time the accounts of the municipality and the council shall by the town treasurer produce and lay before the person so appointed all books and accounts of the municipality with all vouchers in support of the same and all books papers and writings in their power relating thereto.

Lieutenant-Governor to appoint auditors.

73. For the purpose of any audit under the provisions of the last preceding section it shall be lawful for the auditor to hear receive and examine evidence upon oath (which oath such auditor is hereby empowered to administer) and by summons under his hand to require such persons as he may think fit to appear personally before him at a time and place to be stated in such summons and to produce all such books and papers as may be necessary for such audit. And any person so required who shall without lawful excuse refuse to attend in obedience to such summons or who having appeared shall refuse to be examined on oath or affirmation or to take such oath or affirmation or having taken such oath or affirmation to answer such questions as shall be put to him shall be liable to a penalty not exceeding twenty pounds for every such act or offence and in default of payment to be imprisoned with or without hard labour for any period not exceeding three months unless such fine be sooner paid; provided that no conviction under this section shall be taken to exempt the person convicted from liability to do or perform the act matter or thing required to be done or performed by him or from being successively convicted and punished for every distinct commission of the same act or offence.

Powers of auditors.

74. (1) The auditor or auditors appointed by the Lieutenant-Governor shall disallow every payment made without due authority according to law and surcharge the same on the person or persons making or authorising the illegal payment and shall charge against any person responsible therefor the amount of any deficiency or loss incurred by the negligence or misconduct of that person or of any sum which ought to have been brought into account by that person and shall in every case certify the amount due

Auditors power to surcharge.

from such person. Every sum so certified by the auditor shall be paid by such person to the town clerk or other official appointed by the council within fourteen days after the same has been so certified and if not so paid may be recovered from such person as a debt by the auditor who shall be paid by the council his reasonable costs and expenses incurred in such proceedings. Any sum so recovered shall be paid to the town clerk or other official appointed by the council; provided always that it shall be lawful for the Colonial Secretary to remit the whole or any part of any sums surcharged against any person under this section.

(2) For the purposes of this section the persons against whom any illegal payment may be surcharged shall include all members of the council or any committee thereof who were present at the meeting of the council or committee thereof at which such payment was authorised and who did not cause their votes against the resolution authorising such payment to be recorded in the minutes.

Additional auditors may be appointed by council.

75. In addition to the auditor or auditors appointed by the Lieutenant-Governor the council may appoint an auditor or auditors in the manner following that is to say: any member of the council may prior to a date to be fixed by the council nominate one or more duly qualified persons to act as auditor or auditors of the accounts of the municipality; all such nominations shall be referred to a committee consisting of not less than five members of the council who shall report thereon to the council and the council shall not less than fourteen days after the date fixed as aforesaid proceed to elect by ballot one or more persons out of the names nominated or in the event of there being no such nominations one or more duly qualified auditors; such election shall be for a period of three years and the council shall fix the remuneration to be paid to such auditor or auditors at the time of their election. The auditor or auditors elected as aforesaid shall have all the powers conferred by this Ordinance upon the auditor or auditors appointed by the Lieutenant-Governor.

Duty of auditors appointed under the preceding section.

76. It shall be the duty of the auditor or auditors appointed as provided in the last preceding section in addition to the ordinary duties of auditors to certify not less than once in each year whether or not;

- (a) the accounts of the municipality are in order;
- (b) separate accounts of all trading undertakings have been kept;
- (c) the accounts issued present a true and correct view of the financial position of the municipality and of its transactions and of the results of trading (if any);
- (d) due provision has been made for the redemption and repayment of any moneys borrowed by the council whether in the form of municipal stock or bills or otherwise;
- (e) the value of the assets of the municipality has been fairly stated;
- (f) the amounts set aside for depreciation and obsolescence of plant are adequate;
- (g) all his or their requirements and recommendations as auditors have been complied with and carried out.

CHAPTER VII.

CONDUCT OF MEMBERS AND SERVANTS OF THE COUNCIL.

77. No councillor shall act for the council for reward as an advocate attorney law agent medical practitioner veterinary surgeon architect engineer surveyor accountant or in any other professional capacity.

Prohibition of councillor acting for council in professional capacity for reward.

Any councillor contravening this section shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months and the court before which he is convicted may order that he shall refund to the council the amount of any fees received by him in respect of so acting as aforesaid and that he shall vacate his seat and his seat shall thereupon become vacant.

78. (1) Save as in the preceding section and in section four of the Municipalities Elections Ordinance 1903 provided no councillor shall be prohibited by reason of his office from contracting with the council either as vendor purchaser or otherwise nor shall any contract or bargain entered into by or on behalf of the council in which any councillor shall be in any way directly or indirectly interested be on such account avoided or set aside nor shall any councillor so contracting or being so interested be liable save in the case hereinafter mentioned to account to the council for any profit realised by any such contract or bargain by reason of such councillor holding his office or by reason of the fiduciary relation thereby established.

Provisions as to councillors being interested in contracts with the council.

(2) Where any councillor is interested otherwise than as shareholder in a limited liability company in any contract or bargain with the council which involves according to the terms thereof the expenditure or receipt by the council of one hundred pounds or more it shall be the duty of such councillor before or at the meeting of the council at which such contract or bargain is determined on or approved if his interest then exists or if his interest is subsequently acquired then within a reasonable time and in any case not later than one month after the acquisition of such interest to disclose the same to the council and such disclosure if not made at a meeting of the council may be made by letter addressed to the town clerk which shall be reported by him to the council at the first meeting held after the receipt of such letter and any such disclosure shall be entered on the minutes of the meeting of the council at which the same is made by the councillor or reported by the town clerk; provided however that it shall not be necessary for any such disclosure to be made

(a) by any councillor in the case of any contract or bargain which the council may expressly authorise to be entered into with such councillor in his own name; or

(b) by any councillor who shall have notified in writing to the town clerk subsequent to his last election as councillor that he has any interest in any firm or partnership in the case of any contract or bargain which the council may expressly authorise to be entered into with such firm or partnership.

(3) Any councillor who contravenes this section by omitting to disclose his interest in any contract or bargain with the council as hereby required shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months and the court before which he is convicted may order that he shall account to the council for any profits which may accrue to him in respect of such contract or bargain and that he shall vacate his seat and his seat shall thereupon become vacant; provided however that the court shall not make such order if it is proved that the omission of any councillor to make such disclosure was due to illness absence from the municipality mistake inadvertence or some other like cause and was not due to any want of good faith.

(4) It shall be the duty of the town treasurer or if there be no town treasurer of the town clerk to prepare every month according to the best information which he is able to obtain a statement showing all the contracts or bargains entered into or authorised by the council during the preceding month in which any councillor is interested otherwise than as a shareholder in a limited liability company and the names of the councillors so interested and to lay such statement before the council at the first meeting held after the same has been prepared and such statement shall be included in the minutes of such meeting.

(5) It shall be the duty of the auditor of the accounts of the council appointed by the Lieutenant Governor to examine from time to time the minutes of the council for the purpose of ascertaining whether the provisions of this section have been complied with and to report to the Colonial Secretary any cases in which it shall appear to him that there has been any failure to comply with such provisions.

79. A councillor shall not in or before the council or any committee thereof vote upon or take part in the discussion of any contract bargain expropriation claim application for licence negotiation or legal proceedings in which he or any person by whom he is employed or whose attorney or agent he is has directly or indirectly any pecuniary interest.

Any councillor contravening this section shall be liable on conviction to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months and the court before which he is convicted may order that he shall vacate his seat and his seat shall thereupon become vacant; provided however that the court shall not make such order if it is proved that such contravention arose from mistake or inadvertence and did not arise from any want of good faith.

80. Notwithstanding anything in this Ordinance contained;
 (a) no councillor shall be prohibited from voting upon or discussing in or before the council or any committee thereof;
 (i) any scheme for the imposition of special rates; or
 (ii) the tariff charge for or the regulations and conditions generally applicable to the supply by the council

Councillor
not to speak
or vote where
he has
pecuniary
interest.

Saving as to
certain case.

of anything or the rendering by the council of any service whether in the whole municipality or any district thereof ;

(b) no councillor shall be required to disclose to the council his interest in any contract entered into with the council for the supply by the council of anything or the rendering by the council of any service at the ordinary published tariff charge for such supply or service ;

(c) it shall not be necessary to include such contract as aforesaid in any statement prepared under sub-section (4) of section *seventy-eight*.

81. A councillor shall not act as agent or representative of any person ;

(a) before any valuation court appointed by the council under the Local Authorities Rating Ordinance 1903 or any amendment thereof ; or

(b) before any other court or committee appointed by the council to deal with the rating of property by way of special assessment or otherwise ; or

(c) before any committee of the council appointed to consider or deal with applications for any licenses which the council has power to grant.

Any councillor contravening this section shall upon conviction vacate his seat and be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months.

82. Any councillor who is required to vacate his seat under any of the foregoing provisions of this Ordinance shall not be capable for a period of three years thereafter of being elected a councillor for any municipality or of holding a commission as justice of the peace or of sitting on any valuation or licensing court.

83. (1) Any member officer or servant of the council or any person carrying out on behalf of the council any statutory power or duty who whether for himself or for any other person corruptly solicits or receives or agrees to receive from any person any fee advantage or reward whether pecuniary or otherwise as an inducement to or in consideration of or otherwise on account of his doing or forbearing to do anything in respect of any matter or transaction actual or proposed in which the council is concerned shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding five years and in addition in the case of any such officer or servant to dismissal from office and to forfeiture of any claim to compensation or pension to which he might otherwise have been entitled and every such member aforesaid shall *ipso facto* be disqualified from continuing a member or being elected or appointed to any public office for a period of seven years from the date of such conviction.

(2) Any person who directly or indirectly gives offers or promises to a member officer or servant of the council or to any person carrying out on behalf of the council any statutory power or duty any fee advantage or reward whether for the benefit of

Councillor not to act as agent before court or committee appointed by council.

Disqualification where seat is vacated.

Penalty on members and officials for receiving bribes and on persons bribing or attempting to bribe members and officials.

such member officer or servant or of another person as an inducement to or in consideration of or otherwise on account of such member officer or servant doing or forbearing to do anything in respect of any matter or transaction actual or proposed in which the council is concerned shall be liable on conviction to imprisonment with or without hard labour for a period not exceeding seven years and to a fine not exceeding six hundred pounds and in default of payment of the same to a further term of imprisonment with or without hard labour for a period not exceeding two years.

No officer or servant of council to be interested in any bargain or contract of the council.

84. Officers or servants of the council shall not in any wise be concerned or interested in any bargain or arrangement whatsoever made by or with the council. If any officer or servant is so concerned or interested or under cover of his office or employment exacts or accepts any promise fee or reward whatsoever other than his proper salary wages or allowances he shall be incapable of afterwards holding or continuing in any office or employment under the council and shall be liable on conviction to a penalty not exceeding fifty pounds and in default of payment to imprisonment with or without hard labour for a period not exceeding three months. Any profit fee or reward which may have accrued to such officer or servant or which may accrue to him by reason of such bargain contract or arrangement may be recovered by the council.

Exemption of servants and members of the council from personal liability.

85. No matter or thing done or omitted to be done and no contract entered into by the council and no matter or thing done or omitted to be done by any member or officer or servant or other person acting under the direction of the council shall if the matter or thing were done or omitted to be done or the contract was entered into bona fide for the purpose of executing this Ordinance or any bye-law in force in the municipality subject any such person personally to any action liability claim or demand whatsoever; and any expense incurred by the council or any such person as aforesaid shall be paid by the council out of the funds applicable to the general purposes of the council; provided that nothing in this section shall exempt any such person from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of the council and which such member authorised or joined in authorising.

CHAPTER VIII.

MISCELLANEOUS.

Power of entry.

86. The council shall have power by themselves or their officers or servants to enter into and upon any building or land within the municipality for the purpose of exercising any power of inspection or execution of works which is given to the council under this Ordinance or under any bye-law in force within the municipality.

Authentication of documents.

87. Every order notice or other document requiring authentication by the council shall be sufficiently authenticated without the common seal of the council if signed by two councillors

or by the town clerk or by any officer of the council duly authorised thereto by any resolution bye-law or regulation of the council.

88. The following persons shall be liable to a penalty not exceeding ten pounds or to imprisonment with or without hard labour for a period not exceeding three months:—

Penalty for obstructing council and persons employed by council.

(1) Any person who wilfully obstructs any member of the council or any person duly employed by the council in the execution of his duty as such.

(2) Any occupier of premises who prevents the owner of such premises from complying with any of the requirements of the council.

(3) Any occupier of premises who on demand refuses or wilfully omits to disclose or wilfully misstates the name of the owner of such premises.

89. Where any matter or thing is by this Ordinance or by any order or notice made and published under the authority hereof directed or forbidden to be done or where any authority is given by this Ordinance to any person to direct any matter or thing to be done or to forbid any matter or thing to be done and such act so directed to be done remains undone or such act so forbidden to be done is done in every such case every person offending against such direction or prohibition shall be deemed guilty of an offence under this Ordinance.

Disobedience to orders issued under Ordinance tantamount to offence against Ordinance.

90. In case any contravention of the provisions of this Ordinance or of any bye-law or regulation in force in the municipality is committed by a company firm or partnership the managing director or person having the management or control of the business or property in the case of a company or firm and each partner in the case of a partnership shall be responsible therefor and shall be liable to the penalty provided for such contravention; provided however that in case of the cancellation or suspension under section *sixty* of a trade licence granted by the council to any company firm or partnership or to any person on behalf of a company firm or partnership any disqualification to hold a licence imposed under the said section may be attached either to such company firm or partnership or to the person who is under this section responsible for the offence in respect of which the order of cancellation or suspension is made or both to the company firm or partnership and such person as to the magistrate making the order shall seem fit.

Contravention of Ordinance bye-laws or regulations by company firm or partnership.

91. The Lieutenant-Governor may from time to time make alter and repeal regulations for the municipality prescribing the hours during which the sale of merchandise by retail may be conducted and the hours during which persons may be employed in any such sale within the municipality.

Regulations as to hours of retail trade.

92. All actions against the council shall be brought within six months of the time when the causes of such actions arose and all such costs charges and expenses as the council shall be put to or become chargeable with by reason of the prosecution or defence of any suit or action or under any judgment of the court shall be paid out of the revenue of the council.

Limitation of actions.

Provisions as
to arbitration.

93. (1) The Arbitration Ordinance 1904 or any amendment thereof shall apply to any arbitration in which the council is concerned; provided that where the reference to such arbitration takes place by the operation of any Law the said Ordinance shall only apply in so far as the same is not inconsistent with the provisions of such Law.

(2) Section *nineteen* of the Johannesburg Municipality Amendment Proclamation 1902 shall be and is hereby amended by the deletion therefrom of the words "or in case of reference either by agreement or by operation of any law under which other provision is not made of any dispute in which the council shall at any time be concerned to arbitration."

Provision
with regard
to the sum-
moning of
public meet-
ings by the
mayor.

94. The mayor may from time to time if he shall see fit upon receipt of a requisition signed by not less than one hundred enrolled voters for the municipality requesting him to summon a public meeting of citizens for the discussion of any matter of public interest summon such meeting at such time and place as he may determine and any costs incurred by the mayor in connection with the summoning and holding of any such meeting may if the council shall so resolve be defrayed out of the revenue of the municipality; provided however that nothing in this section shall apply to the costs incurred in connection with any meeting which is held for the purpose of promoting opposing or discussing the election of any person as a councillor or as a member of any municipal or parliamentary body.

Exclusion of
application of
certain laws.

95. (1) The provisions of Law No. 2 of 1882 and Law No. 8 of 1899 shall not apply to any pound established by the council.

(2) The provisions of Law No. 3 of 1891 shall not apply to any dogs within the municipality.

(3) The provisions of Law No. 13 of 1894 shall not apply to pawnbrokers carrying on business within the municipality as soon as bye-laws or regulations have been made by the council relating to pawnbrokers.

(4) Notwithstanding anything contained in the Municipal Corporations Ordinance 1903 the Municipal Corporations Amendment Ordinance 1904 and the Municipal Amending Ordinance 1905 none of the provisions of the said Ordinances shall apply to the municipality; provided however that section *fifty-eight* of the Municipal Corporations Ordinance 1903 as amended by section *twenty-eight* of the Municipal Corporations Amendment Ordinance 1904 and any regulations made thereunder shall apply to the municipality save in so far as the application of the same is excluded by section *eighteen* of the Rand Provisional Joint Committee Ordinance 1906.

Johannesburg
Market.

96. (1) It shall be lawful for the Lieutenant-Governor upon the application of the council to cancel subject to such conditions as may be agreed upon with the council the following concessions which are now held by the council as cessionary namely:—

(a) The concession relating to the Johannesburg Market granted on the 19th October 1889 by the Government of the late South African Republic to the Johannesburg Market Buildings Company Limited; and

(b) the concession granted by the said Government on the 23rd May 1893 to one Robert Chambers Birkett to erect a weigh-bridge on the Market Square Johannesburg.

(2) Law No. 8 of 1888 (The Market Law) shall not apply to the municipality or to any market therein established as soon as bye-laws or regulations have been made by the council relating to markets and it shall be lawful for the council upon establishing a new market on such site as the Lieutenant-Governor may approve to close the existing market on the square in Johannesburg known as Market Square.

(3) The council may with the consent of the Lieutenant-Governor erect and maintain on the said square buildings for public purposes or set apart any portion of the said square for any public purpose.

97. Where any acts have been done notices given or proceedings taken before the passing of this Ordinance in accordance with the provisions of any law repealed by this Ordinance and such acts notices or proceedings would if done given or taken after the passing of this Ordinance have been properly done given or taken under this Ordinance such acts notices and proceedings shall be deemed to have been done given or taken under this Ordinance.

Provision as to acts done before passing of Ordinance.

98. Nothing in this Ordinance contained shall in any way affect the rights of His Majesty the King His Heirs and Successors or of any person except such as are mentioned in this Ordinance and those claiming by from and under them.

Saving as to rights of Crown and private persons.

99. This Ordinance may be cited for all purposes as the Johannesburg Municipal Ordinance 1906.

Title.

SCHEDULE.

Laws Repealed.	Extent of Repeal.
The Johannesburg Municipal Proclamation 1901 (No. 16 of 1901)	The whole.
Proclamation Transvaal No. 29 of 1901	The whole.
The Johannesburg Municipality Amendment Proclamation 1902 (Transvaal No. 39 of 1902)	Sections 2, 3, 4, 5, 6, 7, 8, 12, 13, 14, and 22.
Ordinance No. 41 of 1902	The whole.
The Johannesburg Municipality Further Powers Ordinance, 1903 (No. 62 of 1903)	Sections 2, 3, 4, and 5.
The Johannesburg Municipal Ordinance 1904 (No. IV Private of 1904)	The whole except Section 8.
The Johannesburg Municipal Ordinance 1905 (No. II Private of 1905)	Part I with the exception of Section 6 and Part II.